

308
No. 1125

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

MATT MEEHAN and THOMAS
LARSON,

Appellants,

vs.

O. A. NELSON, G. M. HENSLEY and
MICHAEL McMAHON,

Appellees.

FIL
OCT 2

TRANSCRIPT OF RECORD.

Upon Appeal from the United States District Court
for the District of Alaska,
Third Division.

INDEX.

	Page
Additional Order.....	151
Affidavit of Service.....	177
Amended Complaint.....	10
Answer.....	8
Answer of Michael McMahon.....	16
Assignment of Erros.....	166
Bill of Exceptions, Order Settling.....	157
Bond on Appeal.....	170
Certificate, Clerk's, to Transcript.....	178
Citation.....	175
Clerk's Certificate to Transcript.....	178
Complaint.....	3
Complaint, Amended.....	10
Costs and Disbursements.....	155
Decree in Action for Specific Performance of Contract.....	164
Diagram.....	154
Findings of Fact.....	159
Motion for New Trial.....	162
Motion for New Trial, Order Overruling.....	163
Order Allowing Appeal.....	173
Order Appointing Referee.....	149
Order Extending Return Day.....	1
Order Making Michael McMahon a Party Defendant	148

	Page
Order Overruling Motion for New Trial	163
Order Settling Bill of Exceptions.....	157
Report of Referee.....	152
Stipulation.....	147
Summons.....	7
Testimony on Behalf of Plaintiffs:	
George Ashenfelter.....	71
George Ashenfelter (cross-examination).....	75
Ben Chase.....	81
W. G. Crabbe.....	67
Oscar Gibbs.....	56
Oscar Gibbs (cross-examination).....	64
Gustav A. Lam.....	82
Thomas Larson (recalled—in rebuttal).....	144
Norman McKay.....	40
Norman McKay (cross-examination).....	47
Norman McKay (recalled—in rebuttal).....	146
James McPike.....	76
James McPike (cross-examination).....	79
H. J. Miller.....	84
O. A. Nelson.....	19
O. A. Nelson (cross-examination).....	27
O. A. Nelson (redirect examination).....	27
O. A. Nelson (recross-examination).....	27
O. A. Nelson (recalled).....	39
O. A. Nelson (recalled).....	79
George Steelsmith.....	48
George Steelsmith (recalled).....	83

Page

Testimony on Behalf of Plaintiffs—Continued:

W. H. Woolridge.....	28
W. H. Woolridge (recalled).....	55
W. H. Woolridge (recalled—in rebuttal).....	145

Testimony on Behalf of Defendants:

Will A. Boss.....	102
Will A. Boss (cross-examination).....	108
William Boss (recalled—in rebuttal).....	146
Edward Crane.....	122
Edward Crane (cross-examination).....	123
Edward Crane (redirect examination).....	124
John G. Crowley.....	124
John G. Crowley (cross-examination).....	128
John G. Crowley (redirect examination).....	130
Thomas Davis.....	119
Thomas Larson.....	85
Thomas Larson (cross-examination).....	90
W. T. McLaren.....	117
W. T. McLaren (cross-examination).....	118
W. T. McLaren (redirect examination).....	119
Matthew Meehan.....	131
Matthew Meehan (cross-examination).....	136
Matthew Meehan (redirect examination).....	141
David T. Roy.....	142
David T. Roy (cross-examination).....	143
Nathan Ziemer.....	111
Nathan Zeimer (cross-examination).....	113
Trial, New, Motion for.....	162
Trial, New, Order Overruling Motion for.....	163

United States Circuit Court of Appeals, for the Ninth Circuit.

MATT MEEHAN and THOMAS LAR-
SON,

Appellants,

vs.

O. A. NELSON, G. M. HENSLEY and
MICHAEL McMAHON,

Respondents.

Order Extending Return Day.

Now, on this 31st day of August, 1904, the above-entitled cause coming on to be heard before the Judge of the United States District Court in and for the District Court, Third Division, at Fairbanks, Alaska, upon the petition of the appellants, appearing by their counsel Messrs. Claypool, Stevens and Cowles, and the respondents O. A. Nelson and G. M. Hensley appearing by their counsel, H. J. Miller, Esq., as well as the respondent Michael McMahon appearing by his counsel David T. Roy, Esq., the said appellants request an order extending the time within which to docket said cause and to file the record thereof with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and shows that the same is necessary by reason of the great distance, slow and uncertain communication be-

tween said Fairbanks, Alaska, and the City of San Francisco, California; and the said Judge of said Court upon the hearing of said motion and being fully advised in the premises and considering that good cause has been shown for the granting of the same—

It is hereby ordered that the time within which the said appellants shall docket said cause on appeal and the return day named in the citation issued by this court be enlarged and extended to and including the 15th day of November, 1904.

JAMES WICKERSHAM,

Judge of the United States District Court, District of
Alaska, Third Division.

Due service of the foregoing order and the receipt of a copy thereof is hereby admitted this 31st day of August, A. D. 1904.

_____,
Attorney for Respondents O. A. Nelson and G. M. Hensley.

DAVID T. ROY,

Attorney for Appellant Michael McMahon.

Entered, Aug. 31, 1904, in Journal 3, p. 282.

on Fairbanks Creek, Alaska, described in the agreement hereinafter mentioned, and containing twenty acres.

2. That on the same day the plaintiffs and defendants entered into an agreement in writing, dated on that day, by which the defendants agreed that they would, in consideration of plaintiffs sinking three holes to bedrock on or near the boundary line between Three and Four Above Discovery on said Fairbanks Creek, District of Alaska, duly convey to said plaintiffs an undivided one-half interest in said placer mining claim Number Three Above Discovery on said Fairbanks Creek. In consideration whereof plaintiffs agreed to perform said conditions on their part, of which said agreement the following is a copy:

“Gold Stream, Feb. 6, 1903.

This is an agreement between M. Meehan and T. Larson of the first part and O. A. Nelson and G. N. Hensley of the second part. In consideration of sinking 3 holes to bedrock on or near the lines of Three and Four Above Dis. on Fairbanks, trib. of Fish of Fairbanks Mining District of Alaska. In consideration they receive $\frac{1}{2}$ interest in No. 3 above Dis. on Fairbanks Creek.

M. MEEHAN,

Work to begin immediately. In case of water driving them out will extend time until July 1, 1903.

M. MEEHAN,

T. LARSON.”

3. That plaintiffs duly performed all the conditions of said agreement to be by them kept and performed

previous to the time fixed in said agreement for the performance thereof.

4. That on or about the twentieth day of March, 1903, and after plaintiffs had duly performed all the conditions of said agreement on their part they demanded from the defendants a conveyance of said interest in said premises, and repeatedly requested defendants specifically to perform their agreement to convey to plaintiffs said one-half interest in said placer mining claim, but that they refused and ever since have refused, and still refuse so to do.

5. That long prior to the commencement of this action defendants took possession of said property and still occupy and withhold the same from plaintiffs.

6. That defendants have not executed a conveyance to plaintiffs.

Whereof plaintiff sues and demands judgment against said defendants:

1. That the agreement so made between the plaintiffs and defendants hereinbefore set out, may be specifically performed and that said defendants be adjudged to convey said interest in said placer mining claim to the plaintiffs, and to execute a good and sufficient deed therefor to them of said property.

2. For five thousand dollars damages for withholding the same.

3. For a reasonable attorney's fee, and for such other or further relief as to the Court may seem just.

H. J. MILLER,
Attorney for Plaintiff.

United States of America, }
District of Alaska. } ss.

O. A. Nelson, being by me first duly sworn, deposes and says, that I am one of the plaintiffs in the above-entitled action; that I have read the above and foregoing complaint and know the contents thereof and that the same is true of my own knowledge.

[Seal]

O. A. NELSON.

Subscribed and sworn to before me this eighth day of December, 1903.

H. J. MILLER,

Notary Public in and for the District of Alaska.

Filed in the U. S. Court, District of Alaska, 3d Division. Dec. 1903. A. R. Heilig, Clerk. By John L. Long, Deputy.

UNITED STATES OF AMERICA.

United States District Court, District of Alaska, Third Division.

O. A. NELSON and G. N. HENSLEY,	}
Plaintiffs,	
vs.	}
M. MEEHAN and T. LARSON,	
Defendants.	}

Summons.

To the above-named defendants, M. Meehan and T. Larson:

You are hereby required to appear in the United States District Court, in and for the District of Alaska, Third Division, within thirty days after the day of service of this summons upon you, and answer the complaint of the above-named plaintiffs, a copy of which complaint is herewith delivered to you; and unless you so appear and answer, the plaintiffs will take judgment against you for the specific performance of contract for conveyance of a one-half interest in placer mining claim Number Three Above Discovery on Fairbanks Creek, Alaska, and for five thousand dollars damages and for a reasonable attorney's fee.

Witness the Honorable JAMES WICKERSHAM, Judge of said Court, this ninth day of December, in the year of our Lord one thousand nine hundred and three, and of our independence one hundred and twenty-eight.

ALBERT HEILIG,

Clerk.

By John Long,

Deputy Clerk.

Filed in the U. S. Court, District of Alaska, 3d Division. Dec. 9, 1903. A. R. Heilig, Clerk. By John L. Long, Deputy.

*In the United States District Court for the District of Alaska,
Third Division.*

O. A. NELSON and G. N. HENSLEY,	}
Plaintiffs,	
vs.	
M. MEEHAN and T. LARSON,	}
Defendants.	

Answer.

Come now the above-named defendants by their attorneys, Claypool & Cowles, and for their answer to the complaint of the plaintiffs, heretofore made and filed herein, say:

I.

They admit the allegations of the first paragraph thereof.

II.

They admit the allegations of the second paragraph thereof.

III.

They deny the allegations of the third paragraph thereof in each, every and all particulars.

IV.

They deny the allegations of the fourth paragraph thereof.

V.

They admit the allegations of the fifth and sixth paragraphs thereof.

Wherefore the defendants demand judgment that they be dismissed hence, that the plaintiffs take nothing, that they have their reasonable costs and disbursements including an attorney's fee, and for such other and further relief as may be just and lawful.

By their Attorneys

CLAYPOOL & COWLES.

District of Alaska, }
Fairbanks Precinct } ss.

M. Meehan, being first duly sworn, on his oath says: That he is one of the defendants in the action herein; that he has read the foregoing answer, knows the contents thereof, and that the same is true.

[Seal]

M. MEEHAN.

Subscribed and sworn to before me this 30th day of December, 1903.

C. E. CLAYPOOL,
Commissioner.

Service by receipt of a copy of the foregoing answer admitted this 30th day of December, 1903.

H. J. MILLER,
Attorney for Plaintiffs.

Filed in the U. S. Court, District of Alaska, 3d Division. Dec. 30, 1903. A. R. Heilig, Clerk. By John L. Long, Deputy.

In the United States District Court, in and for the District of Alaska, Third Division.

O. A. NELSON and G. N. HENSLEY,
Plaintiffs,

vs.

M. MEEHAN and T. LARSON, and
MICHAEL McMAHON,
Defendants.

127.

Amended Complaint.

The plaintiffs complain and for cause of action allege:

1. That on the 6th day of February, 1903, the defendants, M. Meehan and T. Larson were seised in fee and possessed of a certain placer mining claim, to wit, placer mining claim Number Three Above Discovery on Fairbanks Creek, Alaska, and more definitely described

in the agreement hereinafter mentioned, and containing twenty acres.

2. That on the same day the plaintiffs and defendants Mat Meehan and T. Larson, entered into an agreement in writing, dated on that day by which the defendants agreed that they would, in consideration of plaintiffs sinking three holes to bedrock on or near the boundary line between Three and Four Above Discovery on said Fairbanks Creek, Alaska, duly convey to said plaintiffs an undivided one-half interest in said placer mining claim Number Three Above Discovery on said Fairbanks Creek. In consideration whereof plaintiffs agreed to perform said conditions on their part to be performed under said agreement, of which said agreement the following is a copy:

"Gold Stream, Feb. 6, 1903.

This is an agreement between M. Meehan and T. Larson of the first part and O. A. Nelson & G. N. Hensley of the second part. In consideration of sinking three holes to bedrock on or near the lines of Three and Four Above Dis. on Fairbanks, trib. of Fish of Fairbanks Mining District of Alaska. In consideration they receive one-half interest in No. 3 Above Dis. on Fairbanks cr.

M. MEEHAN.

Work to begin immediately. In case of water driving them out will extend time until July 1, 1903.

M. MEEHAN,

T. LARSON."

3. That plaintiffs duly performed all the conditions of said agreement to be by them kept and performed previous to the time fixed in said agreement for the performance thereof.

4. That on or about the twentieth day of March, 1903, and after plaintiffs had duly performed all the conditions of said agreement on their part they demanded from the defendants a conveyance of said interest mentioned in said agreement in said premises, and repeatedly requested defendants to specifically perform their part of said agreement to give and convey to said plaintiffs said one-half interest in and to said placer mining claim, but that they refused and ever since have refused, and still refuse so to do.

5. That long prior to the commencement of this action defendants took possession of said property and still occupy and withhold the same and every part thereof from plaintiffs, to their damage in the sum of five thousand dollars.

6. That defendants have refused and have not executed a conveyance to plaintiffs.

7. That defendant, Michael McMahan, has or claims an interest in said described premises by virtue of an agreement with defendant Matt Meehan, made October the 14th, 1901, and filed for record October the 1st, 1903, on page 140 of miscellaneous records, which said agreement is in the words and figures following, to wit:

“This agreement made the 14th day of October, A. D. 1901, between Michael McMahan and Matt Meehan,

both of the town of Nome, in the District of Alaska, witnesseth:

That the said parties to this agreement hereby form with each other a copartnership and agree with each other to become copartners for the purpose of prospecting, locating, occupying and developing mining ground in the District of Alaska, and working and prospecting the same.

Each copartner shall devote all his time and attention to the business of the copartnership aforesaid.

The copartners shall continue for the term of three (3) years unless sooner terminated by mutual agreement and division of the property then acquired by the parties above named.

Witness the hand and seals of the said parties the day and year first above written.

MICHAEL McMAHON. [L. S.]

MATT MEEHAN. [L. S.]

In the presence of:

S. A. KEUER,

T. E. FAUER."

3. That said claim was located by and in the name of Matt Meehan, and that at the time of said location and prior thereto said defendant, Meehan, had a similar agreement with defendant, Larson, and that by reason thereof the said Meehan only became seised and possessed of an undivided one-half interest in said premises as a tenant in common with said Larson, said half interest subject to the interest of McMahan, and the said McMahan only became seised and possessed of an un-

divided one-quarter interest in said claim by reason of said agreement with said Meehan, if any interest at all, and that said interest, if any, was subject to the agreement hereinbefore first set forth and the interest of the plaintiffs thereunder, and if not so subject the plaintiffs are entitled to onehalf of said claim represented in the interests owned and possessed by said defendants Meehan and Larson at the time said contract was made.

9. That at the time said contract between the plaintiffs and defendants Meehan and Larson was made and entered into and for a long time thereafter, and not until after all the conditions of said contract were by the plaintiffs performed on their part did they have any notice, knowledge or information of said agreement hereinbefore last set forth.

Second.—And for a further amended and supplemental complaint plaintiffs allege:

1. That plaintiff and defendants are tenants in common in said described premises, to wit, placer mining claim Number Three Above on Fairbanks Creek, Alaska, the plaintiffs owning an undivided one-half interest therein, and that at all the times hereinbefore set forth the defendants have been and now are in the exclusive possession thereof.

2. That during said time and times the defendants Meehan & Larson received and collected all the royalties, rents and profits of said described premises amounting in the whole as plaintiffs are informed and believe, and therefore allege the fact to be, to seven

thousand dollars, received by said defendants as royalty as aforesaid.

3. That said defendants occupied said premises upon an implied agreement with plaintiffs as their receiver or bailee of their share of the said royalties and rents.

4. That prior to the filing of this supplemental complaint plaintiffs demanded of said defendants an accounting of said royalties, and the payment to them of their share of the same, and upon said demand defendants refused and still refuse to account and pay said plaintiffs their share thereof, or any part of same at all.

Wherefore plaintiffs sue and demand judgment against said defendants:

1. That the plaintiffs are the owners of an undivided one-half interest in said premises.

2. That the agreement so made between the plaintiffs and defendants hereinbefore set out, may be specifically performed, and that said defendants be adjudged to convey said interest in said placer mining claim to the plaintiffs, and to execute a good and sufficient deed herefore to them of said property.

3. For five thousand dollars damages for withholding the same and for three thousand and five hundred dollars for plaintiffs' share of the rents and profits thereof, and for a reasonable attorney's fee and for such other and further relief as to the court may seem just.

H. J. MILLER,
Attorney for Plaintiffs.

United States of America, }
 District of Alaska. } ss.

O. A. Nelson, being first duly sworn, deposes and says: That I am one of the plaintiffs; that I have read the above complaint and know the contents thereof and that the same is true as I verily believe.

[Seal]

O. A. NELSON.

Sworn and subscribed to before me this tenth day of June, 1904.

H. J. MILLER,

Notary Public.

Filed in the U. S. Court, District of Alaska, 3d Division. Jun. 18, 1904. A. R. Heilig, Clerk. By _____, Deputy.

*In the United States District Court for the District of Alaska,
 Third Division.*

O. A. NELSON and G. N. HENSLEY, }
 Plaintiffs, }
 vs. }
 M. MEEHAN, T. LARSON and }
 MICHAEL MacMAHON, }
 Defendants. }

Answer of Michael MacMahon.

The defendant, Michael MacMahon, answering for himself the amended complaint of plaintiffs says:

1. That he denies each and every allegation contained in paragraphs 1, 2, 3, 4, 5, 6 and 9 of the first cause of action of plaintiffs' complaint.

2. That he also denies each and every allegation contained in the amended and supplemental complaint of plaintiffs.

3. This answering defendant in answer to paragraphs seven (7) and eight (8) of plaintiffs' amended complaint says:

That he claims and owns the undivided one-half interest in the said claim, placer mining claim Number Three (3) Above Discovery on Fairbanks Creek, Alaska; that this defendant owns a half interest in said claim by reason of and under said contract set out in paragraph seven (7) of plaintiffs' complaint.

4. This plaintiff admits the said claim was located by the said Matt Meehan and that he did so under the said agreement with this plaintiff, and this plaintiff has an undivided one-half interest in said claim.

5. This plaintiff has commenced an action in this court against the said Matt Meehan and others, case number 163 of the Civil Docket. The object of said suit is to determine the interests and right of this plaintiff in a large number of claims located by the said Matt Meehan and T. Larson including placer mining claim Number Three (3) Above Discovery on Fairbanks Creek, and to also determine the interests and royalties and asking for a partition and dissolution of the partnership between this plaintiff and the defendant Matt Meehan under the agreement heretofore entered into between them.

This plaintiff asks that his interest in the said claim Number Three (3) Above Discovery on Fairbanks Creek be not determined in this action, but be deferred and determined in said case number 163; that he be saved from costs in this proceeding and such other and further relief as is just and equitable.

MICHAEL MacMAHON,

By DAVID T. ROY and

N. V. HARLAN,

Attorneys for Defendant Michael MacMahon.

Verification and filing out of time hereby waived.

H. J. MILLER,

Attorney for Plaintiffs.

Filed in the U. S. Court, District of Alaska, 3d Division. July 18, 1904. A. R. Heilig, Clerk. By _____, Deputy.

*In the United States District Court for the District of Alaska,
 Third Division.*

O. A. NELSON and G. M. HENSLEY,

Plaintiffs,

vs.

MAT MEEHAN and THOMAS LARSON,

SON,

Defendants.

No. 127.

Testimony.

This case came on regularly for trial in the United States District Court for the District of Alaska, Third Division, begun in the town of Fairbanks, in said Divi-

sion and District on the 14th day of June, 1904, before the Honorable James Wickersham, Judge of said Court.

Court convened pursuant to recess on the 18th day of July, 1904, at 10 o'clock A. M., and the following proceedings were had:

Appearances:

The parties plaintiff and defendant in person.

H. J. MILLER, for Plaintiffs and

CLAYPOOL, STEVENS and COWLES, for Defendants.

O. A. NELSON, the plaintiff herein, being duly sworn, testified as follows:

Direct Examination.

(By Mr. MILLER.)

Q. You are one of the plaintiffs in this action?

A. Yes, sir.

Q. State what arrangements you had, if any, with the defendants, about February, 1903, with regard to Number 3 Above Discovery on Fairbanks Creek.

A. We entered upon an agreement that we were to represent and sink three holes to bedrock on Three and Four for a half interest in three.

Q. Have you the agreement? A. Yes, sir.

Q. Who wrote that agreement?

A. Mr. Meehan.

Q. Did you do anything under that arrangement in the way of carrying out the agreement?

A. I fulfilled the contract.

(Testimony of O. A. Nelson.)

Q. State what you did.

A. We went up there with the grub and started sinking; Hensley started a hole on the 6th of February, I think.

(By the COURT.)

Q. Of what year?

A. 1903; we had Meehan's dogs and moved our stuff out with them; I went back with them and I came back to six and then the work was started; there was a fire put going in the first hole and the next morning we cleaned that fire out and started to dig for the second hole, we got that through the muck and had a fire in the two holes and then started on the third hole and kept working away until we got to bedrock in the second hole, that is the hole on the lower end of four, and almost to bedrock on the other hole, that would be on the upper end of three; we was down but I don't remember how many feet; we was down in the third hole and we ran out of grub and built a fire in the second hole; after we got the grub we cribbed and finished two, I was taking some prospects in the third hole but the water filled it and we couldn't do the work and so when we had fulfilled the contract we took and pulled the grub back out of there.

Q. Did you meet Meehan and Larson on your return with the grub?

A. Yes, we stopped there for dinner, we was entirely out, didn't have anything for breakfast; we was pretty

(Testimony of O. A. Nelson.)

hungry and when we got a square meal we went on into town that same day.

Q. When did you get back from town?

A. The next day and went out as far as Twin.

Q. How long were you absent from the claim?

A. Three days, one day in and two days out.

Q. Did you ever have any conversation with the defendants about what you had done and why you came in?

A. We told them we had got to bedrock with one hole and found a little prospect there and that we was almost to bedrock with the second one. There was two fires when we got back with the grub brought us to the second hole. We was down to the muck in the fourth hole; the muck was something like 12 or 14 feet in the third hole, the hole on the upper end of three over towards the right limit.

Q. After you had returned with your grub and finished your work, then what did you do?

A. After the work was done I went over on Captain creek one trip, that was on the 6th of March.

Q. State how soon after that you met Meehan and Larson.

A. We started to pull out of there the 7th and only made two or three miles the snow was too deep and we had to make a camp; we snow shoed a trail out that same day and on the 8th we got out as far as the mouth of Twin; I think at Golden City on the 8th or 9th we saw Meehan and Larson.

(Testimony of O. A. Nelson.)

Q. State what took place there.

A. We told them that the work was done and told Meehan and told them, I supposed they would like to go and investigate, and he told me, "I guess the work is alright; when you go into town make out your papers and some time when we both came in we will sign them."

Q. Who was present?

A. Hensley was present and Meehan was sitting on the bed when he said it.

Q. Were you present?

A. I am the one that asked the question or made the statement.

Q. What did you do next with regard to making out the papers with according to Meehan's instructions?

Q. We got them some time; I think it was the 16th of May the papers were made out, although I saw Meehan before that time in town and told him we hadn't got the papers made out yet.

Q. When did you see him next?

A. The next I saw him after I got the papers, that was some time in June; I went out on purpose to see him.

Q. State what happened on that occasion.

A. Why, he had told me before that they were going to bale the water out of the holes and see whether they were to bedrock or not, and I told them to go ahead, I expected they had done that when I went out there with the papers but he said he hadn't done it, and was going out to do the work.

(Testimony of O. A. Nelson.)

Q. Did you present him with any paper to sign?

A. I had the paper with me but the way they spoke there was no use of presenting it.

Q. Have you that paper now? A. Yes, sir.

Q. Will you produce it?

(Witness here presents the paper.)

Q. Had you that paper with you at that time?

(Objection as immaterial. Objection sustained.)

Q. State what was said about any conveyance to you.

A. They stated they would not sign any papers at all so I didn't say I had any papers with me or anything to that effect. I said something about I would like to get the papers signed, but when I heard there was no chance that they would sign it I didn't show the papers any.

Q. Did you make any other effort to have them carry out their part of the agreement?

A. I didn't personally but Hensley there talked to them.

Q. Did you try through any other agency or any other party to have this matter approved?

A. I think Hensley employed you to look after it.

Q. Do you know anything about my employment?

A. Not personally but I understood so.

Q. Did you talk with any one else, any attorney about or regarding looking this matter up?

(Objection is immaterial. Objection sustained.)

Q. Will you state to the Court how long you worked?

A. We was there a month excepting three days.

(Testimony of O. A. Nelson.)

Q. Will you state the depth to bedrock?

A. The first hole was a strong 16 feet deep and one foot down in the bedrock; the second hole is 17 and some inches to bedrock, I think three inches or something like that—any way it is a strong 17 feet, and the other one is 22 feet or about that.

Q. Can you indicate to the Court on what portion of those claims these holes were sunk? A. I can.

Q. You are familiar with that (hands him a map).

A. This is Number Four; there is the initial stake, 330 feet each side of them, and that is the hole on the lower end of four, and this is the second hole, and there is the hole on the lower end of Four and these are the two holes on the upper end of Three, that hole there is 225 feet from the center line; this is the creek running here; that one is pretty close to the creek.

Q. Did you measure the distance from the center stake to the outside hole?

A. Yes, sir, 275 feet; that is as near as a man can measure with a tape line.

Q. Can you state when you went there to work?

A. The time was the first part of February, 1903; the work was started on the 6th; I don't remember just how many days it took us to move over there.

Q. What was the condition of things there as regards persons working on the adjoining claims?

A. There was a man by the name of Farrington, I believe he was on 12; he was drowned out with water;

(Testimony of O. A. Nelson.)

Mr. McPike was drowned there; I ain't certain whether it is Discovery or One Above Discovery.

Q. State when this work was commenced, with reference to any work having been commenced on Fairbanks Creek, as to its being the first or second work commenced, or any other work commenced, of any work that was commenced there.

A. I don't nknow whether McPike had got to bedrock with any hole or not when we got there. If he did, that should be the first one as got to bedrock.

(By the COURT.)

Q. On Fairbanks Creek? A. Yes, sir.

Q. What was the condition of the snow?

A. The snow was very deep.

Q. Any trails broken?

A. No, sir; we fell into snow up to our arm pits lifting our sleds back.

Q. Were the boys about through when you finished the work? A. McPike was.

Q. Did either Meehan or Larson ever inform you that you were not to bedrock?

A. They said they had doubts about it.

Q. Do you know anything they did in carrying out their doubts?

A. They sunk some holes, I understood, and drifted.

Q. What did you know about it?

A. I don't know anything, I was never down in there; it is only hearsay. I have been there and seen the holes and seen the drifts, I can't say personally.

(Testimony of O. A. Nelson,)

Q. As to sinking them you can't say?

A. No, sir.

Q. State what you saw there.

A. I saw two holes sunk below my holes and a drift started on them.

Q. You can explain to the Court about how those holes were sunk.

A. They were sunk below my holes.

Q. What do you mean by below?

A. Down stream.

Q. How far?

A. I didn't pay any attention to that.

Q. Well, about how far?

A. I think some where about 10 or 12 feet as near as I can remember.

Q. State to the Court now generally what you know about that—this shaft you are speaking of.

A. I know that there were two there below my holes and that the drifts was run to the left as I understand.

Q. Explain to the Court with your pencil there about those shafts on that plat.

A. This is where the holes was as near as I can say; this is where the drift run from them holes; I wasn't down in them, I was just looking from the top.

Q. You weren't down in there yourself?

A. No, sir.

Q. Who was present at the same time?

A. McKay and Gibbs was present when I was there.

Q. Where was Henley?

(Testimony of O. A. Nelson,)

A. I don't hardly know; he was in Skagway and wrote to me that he would be in here the first of April; I have been expecting him and he aint got here.

Cross-examination.

Mr. CLAYPOOL.—I want to explain that Mr. Roy appears for Mr. McMahon, and to as that we may cross-examine separately.

(Mr. ROY.)

Q. Had you at any time any conversation with McMahon as to going out there and sinking those holes?

A. I hadn't.

Q. Didn't speak with him? A. No.

Redirect Examination.

(Mr. MILLER.)

Q. Had you any knowledge of any interest of McMahon in this property at this time?

A. Not the least.

Q. Any conversation with him or any mention of him by the other defendants? A. Not at all.

Q. You knew nothing of him? A. Not a bit.

Q. As far as any claim to this property is concerned?

A. No, sir.

Recross-examination.

(Mr. CLAYPOOL.)

Q. I wish you would indicate here on the map the first hole that you say is 16 feet; will you please write the figure one there? A. Yes, sir.

(Testimony of O. A. Nelson,)

Q. Now, the second hole you testified was 17 feet and some inches? A. This is it.

Q. And the other you will please number three.

A. Yes, sir.

(Witness here marks the plat as requested.)

W. H. WOOLRIDGE, witness being produced on behalf of the plaintiffs, testifies as follows:

Direct Examination.

(By Mr. MILLER.)

Q. Have you been on Fairbanks Creek?

A. Yes, sir.

Q. A number of times? A. Yes, sir.

Q. About how often?

A. I think I have made about four trips there, all told.

Q. State when you were there.

A. I went out there the first time some time in November, that is along about the first; I don't know the date exactly, and I remained there until late in December.

Q. Where were you located?

A. On the bench of Four Below.

Q. State what you know about Three and Four Above on Fairbanks Creek.

A. I know about them as the trail passes them, and about the 24th of December I was on Three and Four.

Q. State for what purpose and what you did.

(Testimony of W. H. Woolridge.)

A. I was sent there to measure the holes that were supposed to have been sunk by Meehan, or his crowd, which I did.

Q. What date? A. December 24th.

Q. Of 1903? A. Yes, sir.

Q. State to the Court what you know about it and what you did?

A. I was not able to do that work alone, and I got some men to go with me.

Q. Who?

A. George Steelsmith, George Ashenfelter and William Crabb.

Q. Go on and tell the Court all about it.

A. We went to those holes and the first hole, or about where that hole was, was covered with a glacier; Mr. Ashenfelter showed us where the hole was, but it was entirely covered; that was the one—where is that paper? This is the one that he has Number One hole, this was entirely covered with glacier, we were unable to find it at all; then we went to this one that is marked Number Two, and it was sluffed in; to get back, I was sent there to measure these old holes, the depth of them, and also the one that was sunk by these people; I was unable to get into the holes because they were covered with snow and ice and sloughed in so.

(By Mr. CLAYPOOL.)

Q. Two and three, you mean?

A. Yes, sir, these holes which was supposed to be sank by Nelson but we went into this hole Number Two

(Testimony of W. H. Woolridge.)

and measured the distance from the surface to the bottom of the hole, and the distance from the hole—the length of this drift—and the distance at the surface.

Q. The old hole is Number Two?

A. Well, this hole by the side of Number Two, sunk by Meehan is the one that we measured, I measured the depth of the hole from the surface and the length of the drift from this hole, and the distance of this hole sunk by Meehan to the hole sunk by Nelson at the surface; now do you want the depth of these in feet?

(By Mr. MILLER.)

Q. Yes, sir.

A. Well, I didn't tax my memory with that, but I put it down at the time and have my notes with me.

Q. Referring to the notes you made at the time you may state to the Court how they were made and on what facts they were based.

A. Mr. Ashenfelter held the line at the surface and I held the line at the bottom of the hole; the hole now that I am describing is hole known as Number Two; the depth of this hole is 16 feet and seven inches.

(By the COURT.)

Q. That is the new hole?

A. Yes, the hole put down by Meehan. The distance from the old hole is nine feet at the surface, that is from the edge of one hole to the edge of the other; the length of the drift at the bottom of this hole sunk by Meehan is twelve feet and two inches; the width of the drift at

(Testimony of W. H. Woolridge.)

the mouth is three feet; the head of the drift at the mouth is four feet and eight inches; and the head of the drift at the back end is two feet and four inches; that is the measurements of the first hole and the second hole is then out here.

(By Mr. MILLER.)

Q. Hole Number Two?

A. Yes, sir. When we ran into this drift sunk by Mr. Nelson the drift didn't run directly from this hole to this, but it sheerd a little something like that would be (indicated). They followed the bedrock through and in striking this hole which is supposed to be put down by Nelson we found a break in the bedrock probably about 18 inches long, which shows a dip in the bedrock, well not exactly a dip but a break, and this break or indentation was filled with ice; this was not at the end of the hole, but on the side of the hole at the end, it had the appearance here as though this drift had been entirely taken out; this block of ice was undoubtedly the bottom of the hole put down by Nelson, it had all the appearance of being the bottom of the hole.

Q. You may state what the appearances were?

A. It showed that it was not glacier ice, only had sloughed in. It was not a clear blue ice like our glacier ice; it had the appearance of being dirty, muddy water that had run into the prospect hole.

Q. Were there any other facts that would cause you

(Testimony of W. H. Woolridge.)

to make the statement that you do that it was water that had run into the prospect hole?

A. Well, there is nothing else that I recall, except that it was not clear blue ice like you would find in a glacier.

Q. Could you tell whether that glacier continued below the bedrock, or even with it?

A. It didn't continue below the bedrock.

Q. Did it continue to it? A. Yes, sir.

Q. Were there any indications or formations around this ice that would indicate that it was the formation that originally existed there or something that existed by reason of a shaft or prospect hole having been put there? A. It looks as though the drift—

Q. Tell all you can about the appearance of that having been a prospect hole or not—that glacier or ice which you detected there?

A. I don't know that there is—

Q. Anything besides the ice and the character of the ice?

A. It looked as though when this last drift was put in there that there remained a part of it not taken out, whether it was that the points was run in there and the dirt not moved, or it sloughed from the roof would be a hard matter for a person to decide; it was one or the other.

Q. Where was this glacier with reference to the shaft and the hole supposed to be sunk by Nelson, on which side of this drift was it?

(Testimony of W. H. Woolridge.)

A. In looking downstream it would be on the right.

Q. How much of this glacier or ice did this drift strike?

A. Well, I didn't measure the face of the ice.

Q. Well, can't you give the Court an idea?

A. Well, I should judge there was six or eight inches of them that showed up distinctly, six or eight inches of face.

Q. Did it project into the drift or was it on a line with the wall of the drift?

A. It was on a line with the wall of the drift, or very nearly so?

Q. Was it flush with the wall of the drift?

A. Not quite.

Q. How much did it lack?

A. I didn't measure that indentation of the ice, I couldn't tell you exactly.

Q. Had they struck this ice and dug to it, or had it sloughed off?

(Objection as not a proper method of examination.)

The COURT.—The witness may state what it looks like.

A. It seems as though I have made that clear already.

Q. State about hole Number Three, all you know about that?

A. Then after we measured this hole Number Two, we went to hole Number Three—

(Testimony of W. H. Woolridge.)

Q. One moment, before you leave hole Number Two. State if you did anything to ascertain, or if you did anything to ascertain the direction in which this drift ran from one hole to the other.

A. We laid a stick right across the hole, like this— at the surface, and we had a line from this hole, had it pointed as near toward the center of the old hole as we could get, from the center of this hole—that is, the one put down by Meehan—and we laid the stick right across the center pointing as near as we could to the center of the old hole.

Q. Then what did you do with reference to that stick? While that stick was there what did you do to locate the direction of this?

A. We just simply found that the drift didn't run direct from one hole to the other but struck a corner of the drift and sheered a little.

Q. Was it dark or light back there?

A. It was light, we had a candle. I had the candle back at the end of this drift and Steelsmith lined it up and he said it didn't run direct to this hole, he held the candle back here and I went to the bottom of this hole and we could tell that it didn't run direct but it struck the hole; we could tell that it struck the bottom of that hole from the ice in the bottom of the bedrock.

Q. Who held the tape line?

A. Mr. Ashenfelter held one end and I started to put him on the edge of the drift there and I carried the other end myself.

(Testimony of W. H. Woolridge.)

Q. That was on the top? A. Yes, sir.

Q. Who was at the bottom?

A. Steelsmith at one end and I carried it out there and then we exchanged; I held the line here and he went to the back end.

Q. At what time, with reference to the time you did this, did you make those notes in your book?

A. At the same time while we were in the hole.

Q. You may state to the Court how far past this ice this drift extended.

A. I didn't measure that but it wasn't very far.

Q. Well, about how far?

A. I wouldn't judge; it was more than a couple of feet; the drift was not square across the end; it was rounded or something like that.

Q. You may state the character of that drift, at that end, as to the size of it, as compared with the size of it here, as to whether the size continued uniform all through, and if it varied, in what way it varied?

A. The head of the drift at the back end was two feet four inches.

Q. Was that less, or the same as any other portion?

A. It was considerably less.

Q. State all you know about hole Number Three.

A. We took the measurements of hole Number Three the same as hole Number Two, if you would like to have that all explained I can give you that.

Mr. MILLER.—Does the Court wish the witness to give them?

(Testimony of W. H. Woolridge.)

The COURT.—I don't care what you do.

Q. Go ahead and explain it to the Court.

A. We went to hole Number Three and took the measurement from the surface to the bottom of the hole, then we measured the length of the drift, then we measured the distance at the surface from the edge of one hole to the edge of the other the same as we did in taking the other measurements, and the depth of this hole sunk by Meehan was 22 feet and 8 inches, and the length of the drift 10 feet and 4 inches; and the width of the drift three feet, and the distance of the holes apart at the surface, nine feet.

Q. How much less was the drift than in hole Number Two in length?

A. The length of the drift in the first hole was 12 feet 2 inches and the length of the drift in the second hole was 10 feet 4 inches.

Q. Go right on and state to the Court about the drift in the second hole, Number Three.

A. I gave you those measurements. We entered this drift and carried the candle back to the end and laid a pole across the center of the drift pointing to the center of the old drift, as near as could be without measuring it, and then when we lined our light up with the pole we found it varied something like this would be (indicates). Now this is 12 feet.

Q. Go ahead and state all about that—continue right along with that drift and explain to the Court all about it.

(Testimony of W. H. Woolridge.)

A. Steelsmith carried a candle to the back end of the drift and I stood in the shaft Number Three; I lined that drift up with the pole we had across the center of the shaft and then we held the pole at the edge so as to try and see if the drift struck the other hole; we were all satisfied that it didn't strike the hole at all, that this drift missed the hole sunk by Nelson.

Q. It being ten feet four inches, might it, if it had been in a direct line, have missed the shaft sunk by Nelson and Hensley? A. No, sir.

Q. Do you know anything about the dimensions on the surface of that hole to the old hole sunk by Nelson and Hensley? A. No, sir.

Q. Approximately? A. No, sir.

Q. Can you give the Court an idea as to the character of that old shaft, was it two feet or eight feet?

A. Well, I should judge it would be in the neighborhood of five feet, or perhaps six; the edges had sloughed in considerably; the only thing I was particular about was to get the distance of the hole sunk by Meehan to the hole sunk by Nelson.

Q. State to the Court what date this was that you made this examination?

A. On the 24th day of December, 1903.

Q. Apparently, how long had this drift been sunk, or do you know?

A. I do not; it was not an old hole; it had been put down since the freeze-up.

Q. From this old shaft and from what you could say

(Testimony of W. H. Woolridge.)

of it, and from the dump that was taken from it, did it appear to have been taken down a considerable depth or apparently to bedrock?

A. There was considerable gravel and dirt around the hole.

Q. State the extent of the excavation as to whether it appeared to have been extensively worked or very limited as to the probable depth that had been made there by reason of it?

A. It looked as if there had been work enough done; there was work piled around it; there had been enough to put a hole down.

Q. How was it as compared with hole Number Two?

A. In what way?

Q. As to the appearances of work that had been done in the old drift?

A. There was very little difference in that respect.

Q. Judging from the surface indications and what you could see of the old shafts, if one of them was to bedrock, what would be your judgment as to the other having been to bedrock also?

Mr. CLAYPOOL.—There is nothing to found that on.

A. I couldn't tell anything about it.

Q. Was there the same amount of work done on the two holes?

(Objection as repetition. Objection overruled.)

A. It would be impossible for me to tell.

(Testimony of W. H. Woolridge.)

Q. Just apparently were the two holes alike—were the excavations of similar size, approximately, or not?

A. I couldn't tell in that respect because I didn't notice that part of it.

O. A. NELSON, recalled, testified as follows:

Direct Examination.

(By Mr. MILLER.)

Q. When were these shafts made by Meehan and Larson, dug?

A. It was in the fall; I couldn't state the dates.

Q. When, with reference to this suit having been brought?

A. I think I brought the suit afterwards.

Q. Did you know of these shafts having been sunk before you brought this suit? A. Yes, I did.

Q. Did you make any examination of these shafts before you brought this suit? A. I did not.

Q. Do you know in what month these shafts were sunk by Meehan and Larson?

A. In October I suppose; I ain't certain.

Q. State to the best of your knowledge.

A. Well, at the freeze-up—it had froze up.

Q. Shortly after, or very long—you can give the Court an idea. Were you at Fairbanks at that time?

A. Yes, I was.

Q. Well, then state to the best of your knowledge.

(Objection to counsel cross-examining his own witness.

Objection overruled.)

(Testimony of O. A. Nelson.)

A. Well, I don't remember where I was at the time I heard the statement. I cannot recollect any date to guide myself by. I know it had froze up. I started the suit afterwards.

Q. Had you gone about the hose or inspected them at the time you started your suit? A. I had not.

Q. Had you had anyone else go there for you?

A. I had not.

Q. Had you any knowledge other than what you heard in general conversation? A. I had not.

NORMAN McKAY, witness produced on behalf of plaintiffs being duly sworn, testified as follows:

Direct Examination.

(By Mr. MILLER.)

Q. Where have you lived for a number of years past? A. In Dawson.

Q. In what business?

A. I followed placer mining in Dawson.

Q. How long have you followed it?

A. Since the fall of '98.

Q. How long have you been at Fairbanks, Alaska?

A. Since last fall after the freeze-up.

Q. What have you been doing at Fairbanks principally—I mean in the District?

A. I remained here about a month until just before Christmas and went out to Fairbanks and sunk two holes there to bedrock on a lay on 4' Below.

(Testimony of Norman McKay.)

Q. How long were you on Fairbanks?

A. Up till the 23d of May.

Q. State if you went upon Numbers 3 and 4 at any time last winter to investigate some of the work there claimed to have been performed by Nelson and Hensley, and if so, when?

A. Yes, I did.

Q. About when was that?

A. I don't just remember the date.

(Witness here refers to a note-book.)

(By Mr. CLAYPOOL.)

Q. What is that you have got?

A. It is just a memorandum of the depth of the holes.

(By Mr. MILLER.)

Q. What memorandum is that?

A. It is the depth of the holes—February 12th.

Q. Was that taken at the time you went there?

A. Yes, I made a little memorandum of the depth and distance between the shafts.

Q. That was made at the time you went there and made at the time you did this work, was it?

A. Yes, sir.

Q. Tell the Court who made that memorandum.

A. Mr. Gibbs, it was the 23d of February—no, the 12th—and we—

(Objection to witness telling what it is if he didn't make it himself. Objection sustained.)

Q. Did Mr. Gibbs make that with your knowledge?

A. Yes, the 12th of February.

(Testimony of Norman McKay.)

Q. Did you read it after Gibbs made it?

A. Yes, sir.

Q. At whose request did Gibbs make it?

A. Nelson and I.

Q. Was it made after the facts and the investigation there?

(Objection.)

By the COURT.—Ask him when it was made.

Q. When was it made with reference to what you did there? A. After the measurements was taken.

Q. Did you read it over immediately after it was made by Gibbs?

(Objection.)

By the COURT.—Let him go and state what they did.

Q. Go ahead and state what you did.

A. I went down the shaft—Gibbs and Nelson let me down; that is, we measured the depth of shaft No. 2 17 feet.

Q. Can you mark that on this plat?

Mr. CLAYPOOL.—They are marked 1, 2, and 3 and it isn't necessary to mark them any more, I think.

A. This "2" is the shaft sunk by Meehan. Nelson and Gibbs let me down and we measured the surface from the old shaft to the new one—it was 10 feet. The depth under the shaft was 17 feet. The length of the drift to where it struck the little glacier—the ice—was 10 feet. The distance from that into the end of the draft was 2 feet.

(Testimony of Norman McKay.)

Q. State to the Court about this glacier of ice that you testified about—what you saw?

A. I saw about the first six inches of ice—glacier—it was dark. The ice was very dark. It looked as though it was a glacier formed from the old shaft. I would say that by the experience I have had in drifting old drifts.

Q. State where it was with reference to this line of the drift—upon which side of the drift it was.

A. On the right-hand side going up the stream.

Q. On which side of the drift was the hole supposed to be sunk by Nelson and Hensley?

A. On the upper side.

Q. Was the glacier and the hole supposed to be sunk by Nelson and Hensley on the same side or on the opposite sides of the drift?

A. I don't exactly understand you.

Q. Can you mark it on this paper?

A. Here is the shaft by Meehan—this is sunk by Nelson—here is the right-hand side. About 2 feet from the end of the drift here is where they struck the glacier.

Q. Did that glacier project into the drift, or was it on a line with it?

A. It sloughed off about an inch, I should judge—as though it had struck and afterwards sloughed off around.

Q. Well, then was it flush with the line of the drift or not?

(Testimony of Norman McKay.)

A. Well, no—the glacier was in a little bit—that is, it sloughed off from the ice. It was only the thickness of about an inch more or less.

Q. Had the drift struck the glacier in the first instance apparently?

A. It didn't seem like it—I couldn't say for certain.

Q. Tell the Court the direction of this drift from the shaft made by Meehan and Larson with reference to this supposed shaft of Nelson and Hensley?

A. Well, we laid a stick across pointing direction to old shaft and I stood in the bottom and had a candle in the end of the drift—I stood in the bottom of the shaft and held my hand in that direction and looked up—we could look up and see the stick pointing in a different direction. It was not running directly for the old shaft.

Q. How much did it vary in that distance apparently? A. I could not say.

Q. State to the Court what you know about No. 3 shaft.

A. Gibbs and Nelson and I measured the distance on the surface 10 feet, more or less. The old shaft was sloughed in—both the old shafts. It was 10 feet, more or less.

Q. How wide were they across—the old shafts?

A. I could not tell as to that. There was quite a bit of snow on the glacier on top. We measured the depth of the shaft sunk by Meehan 22 feet, The distance of

(Testimony of Norman McKay.)

the drift was 10 feet—running about the same direction as the other.

Q. You state that from memory—could you not refer to your notes and tell the Court exactly?

(Objection on the ground that the notes have not been admitted.)

Mr. MILLER.—It appears that Gibbs made these notes in the presence of this witness at the time—immediately after this examination and accepted them then and approved of them at that time; it is equivalent to having made these notes, and I think that on that showing we have a right to refresh the witness' memory at this time.

The COURT.—I don't think the witness' memory seems to be very defective.

Q. Those notes were correct at the time that they were made according to your recollection then?

A. Yes, sir.

Q. Can you tell the exact distance of the drift from these notes—in No. 3 shaft? A. Ten feet.

Q. It appears that way on the notes?

Mr. CLAYPOOL.—I object on the ground that he didn't make those notes and they don't seem to be necessary.

The COURT.—He need not refer to his notes. They are not in evidence.

(Plaintiffs except.)

(Testimony of Norman McKay.)

Q. From the examination you made there how much did this drift vary from the direct court—from one shaft to the other—to No. 3?

A. I should judge 3 or 4 feet.

Q. State to the Court, if according to that variation it struck the Nelson and Hensley shaft—as to whether it was to bedrock or not.

A. I don't think that it struck the old shaft in that direction.

Q. I will ask you to state to the Court if in your opinion it struck under the corner of the old Nelson and Hensley shaft as it appeared on the surface, if it would be likely to strike the shaft at the bottom of the hole?

(Objection. Objection sustained.)

Q. Can you state that?

A. I cannot say for certain. The old shaft sloughed in so that it was 10 feet, more or less, on the surface of the drift. Ten feet plumb with the line from the edge of the hole.

Q. From what you ascertained there, would this drift strike under any portion of this Nelson and Hensley shaft?

(Objection as repetition. Objection sustained.)

Q. Did that appear to be a fair test as to the old shaft having been to bedrock?

(Objection as calling for an opinion. Objection sustained.)

Q. State the distance from the end of the shaft in

(Testimony of Norman McKay.)

the direction of the Nelson and Hensley shaft in a direct line from the one shaft to the other.

(Objection as repetition. Objection overruled.)

A. Three or four feet, as near as I can judge.

Cross-examination.

(By Mr. CLAYPOOL.)

Q. You say you have mined in Dawson since 1898?

A. Yes, sir.

Q. You are familiar with the nature of bedrock and gravel in Dawson? A. Yes, sir.

Q. How familiar were you with the nature of bedrock and gravel and other general characteristics of the ground here—what experience have you here?

A. I sunk those two holes.

Q. That was all your experience in the Tanana district?

A. I worked three months for McKinnon and Purches.

Q. What is the difference in the general nature of the ground in the Dawson country and the bedrock and gravel here, generally speaking?

A. It is different on different creeks in Dawson. On Dominion it is just exactly the same. It is similar to Dominion Creek.

GEORGE STEELSMITH, produced as a witness on behalf of plaintiffs, being duly sworn, testified as follows:

Direct Examination.

(By Mr. MILLER.)

Q. Where have you been during the past winter principally? A. Fairbanks Creek.

Q. What is your business?

A. I have been mining.

Q. On what portion of Fairbanks Creek?

A. I have been located on 4 Below Discovery.

Q. Do you know anything about 3 or 4 Above on Fairbanks?

A. I know where they are located and I visited those 2 claims during the winter—the latter part of the month of December.

Q. With whom?

A. I was in company with Woolridge, Crabbe and Ashenfelter.

Q. State to the Court what you did.

A. We went there for the purpose of investigating the work that had been done some short time before by Meehan or his men. For the purpose of ascertaining the depth and direction of the drifts in comparison with the work done by Nelson and Company, or others. We went on the ground and tried to find the holes—No. 1 or the one that was sunk on the right limit. The lower end of No. 4 was completely covered over with ice at that time and there had been no other work done at that

(Testimony of George Steelsmith.)

time besides Nelson's, so we didn't stop to bother with that one, but came to the one that was near the middle—or hole #2 counting from the Left Limit.

(By the COURT.)

Q. On No. 3?

A. Yes, on the upper end of 3. We found that hole and we made the measurements from the surface as to the length of the drift and the distance between the holes at the surface, and I think we took also the height and width of the drift, etc., also the direction as to that drift with the direction between the 2 holes; that is, the general trend of the drift. I have forgotten the exact figures as to the depth. It was in the neighborhood of 17 feet and the drift in the neighborhood of 12 feet. I don't remember as to an inch. It was 12 feet in length or thereabouts. We laid a pole across the top of the holes—from the center of the hole that was sunk by Meehan and the one by Nelson. The distance on the surface, I think, was about 9 feet. By laying the pole across the center of each shaft and placing a light in the back of the drift, we sighted through and ascertained the direction of the drift compared with the direction of the 2 holes, and it seemed as if there was a variation; that the drift did not run square along the space where the bottom of the shaft would have been. It seemed to dodge a little to the left looking upstream. How much I couldn't say—probably a couple of feet—at any rate, it was enough to tell that there was a variation.

(Testimony of George Steelsmith.)

Then in this drift on the left-hand side looking upstream. It looked very much as though it had cut directly under the shaft or the space where the shaft of Nelson would have struck the bedrock provided it had been carried down—we found there a glacier.

(By the COURT.)

Q. What do you mean by a glacier?

A. A pillar of ice—what we commonly call a glacier where we find ice in the ground. This didn't look like a natural glacier. The bedrock was not in place at that place. It was different from the bedrock around it—it looked as if it had undergone a change, either by excavation or sliding. What we took for the ground was the bottom of the old shaft.

(By Mr. MILLER.)

Q. What appeared to be the size of this glacier?

A. There was not a great deal of it exposed—probably 6 or 8 inches of ice. It had the form of a pillar and looked just as if it had been in a mold.

(By the COURT.)

Q. Did you dig into it?

A. Not through it, but scratched around the sides. The ground was frozen with the exception of its face. By digging above and below it, it seemed to have a rounded face, but where the gravel had been sloughed away, there it seemed to flatten, just as if the ice had been formed in a mold.

(Testimony of George Steelsmith.)

Q. Could you tell anything about the size of this glacier from the drift you were in?

A. From where it was exposed it looked as though it might have been rather a small pillar or narrow. How far it extended beyond the drift we could not tell. It looked the same as though it might have been the end of a trench dug in the shaft or the ground. It was not more than the width of a shovel blade. How far it extended from the drift we could not say.

(By Mr. MILLER.)

Q. Did you examine the base of this or could you find the base of this shaft of ice?

A. We didn't dig under this ice on account of the ground being frozen. It looked as though it had been thawed at one time, but immediately under this ice it was frozen solid. Still it seemed as if this drift had run in a little below the surface of bedrock—this drift of Meehan's.

Q. Could you tell whether this pillar of ice was larger above?

A. I could not tell as to that on account of the roof of the drift curving in.

(By the COURT.)

Q. How high was the roof of the drift at that point?

A. Probably between 2 or 3 feet. I don't remember measuring it. The drift at the back part was some two and one-half feet and this pillar of ice should be—I should judge—2 feet from the back end.

(Testimony of George Steelsmith.)

(By Mr. MILLER.)

Q. In what direction was this pillar of ice with reference to the old hole of Nelson and Hensley?

A. Well, it was what we supposed was the bottom of the old shaft.

Q. Where was it with reference to the old shaft?

A. It looked as though it was directly under it—or about where the bottom of the old shaft would be according to our measurements.

Q. As to the direction in which the drift had run would it be about the location of the Nelson and Hensley shaft?

A. We considered that it was.

Q. How much of the face of that ice pillar was exposed?

A. It was probably six inches across—6 or 8 inches or something like that.

Q. Was it on a line with the drift—or did it extend into it?

A. It seemed as though the drift had barely touched it and sloughed away from it. It didn't seem as though it ran directly along the face of the drift—it was on the sidewall of the drift and seemed to have touched it enough to have sloughed down.

(By the COURT.)

Q. Afterwards?

A. Afterwards.

(By Mr. MILLER.)

Q. Tell the Court what you know about #3.

(Testimony of George Steelsmith.)

A. After we finished #2 we went to hole #3 and Crabbe and Woolridge and I went down into the shaft and we made the same measurements there as we had in #2; that is, as to the depth of the shaft and the length of the drift, and we also made the measurements on the surface. I have forgotten those figures to an inch. It was in the neighborhood of 22 feet to bedrock—about 10 feet of a drift, and the holes on top, it was either 9 or 10 feet. I have forgotten exactly. The old hole of Nelson's at the surface had sloughed in or crumbled in. It was also covered with snow at that time so that I have forgotten the exact measurements. We also tried the same method of measuring the trend of the drifts. As to the direction between the 2 shafts. It seemed that there was more variation in hole #3 than there was in #2. While the drift was not so long there. There was a doubt left in my mind as to whether the drift ran under the shaft or as to whether it had reached the shaft.

Q. How much variation was there?

A. I could not say as to that. There was plenty of space for the Nelson shaft to have been to bedrock.

(By Mr. CLAYPOOL.)

Q. Why did you think that?

A. It was in the general trend of this drift between the two shafts. By laying a pole across the shafts from the center of one to the center of the other they were supposed to be almost directly down stream. The drift would take trend or something similar to that.

(Testimony of George Steelsmith.)

(By the COURT.)

Q. To the left?

A. Yes, sir—up the hill from the shaft. If this shaft should have been to bedrock the width of the drift would not take in the width of the shaft so that while there was no indication there on the face of the sidewall of the drift showing that they had been disturbed; it still left space in the bottom of that shaft according to my notion, that that shaft could have been to bedrock without this drift proving that it was not.

Q. The drift didn't strike the old shaft?

A. No, sir, it ran to the left. While there was nothing to prove that it was to bedrock I didn't consider that the drift underneath it would give it a fair test to prove that it was not.

(By Mr. MILLER.)

Q. What appeared to have been done regarding the old shaft—how much dirt appeared to have been taken out from what you could see?

A. I didn't take particular notice but if I had, I don't suppose it could have been much, because of the snow on the ground. It was hard to tell how big either shaft was, and owing to the fact that this shaft had been sunk by Meehan and the dirt taken out it would be hard to compare the amount of dirt taken from each excavation. It may have been to bedrock or it may have been that it was not so far as the pile of dirt was concerned.

(Testimony of George Steelsmith.)

Q. If it was not, would it have been likely to have been nearly to bedrock or not?

Mr. CLAYPOOL.—The witness says that he cannot tell that; objection sustained.

Mr. MILLER.—I will ask that Mr. Steelsmith may make a diagram showing these drifts and holes.

The COURT.—Very well.

The Court hereupon announced a recess until 1:30 P. M.

Court convened pursuant to recess on the same day at 1:30 P. M., and all the parties being present as heretofore mentioned, the following proceedings were had:

W. H. WOOLRIDGE, recalled, testified as follows:

(By Mr. MILLER.)

Q. Have you a diagram of the plat showing the matters you testified to this morning? A. Yes sir,

Q. Will you produce it? A. Yes, sir.

(Witness here produces the diagram.)

Q. Is that it? A. Yes, sir.

Q. What does it show?

A. It shows the two claims No. 4 and No. 3 Above on Fairbanks. I would like to go on and say to the Court here that I marked the supposed holes about where they were, but the plat is very small. This is hole No. 2. I have made it larger on the side here so as to show you about the direction of the drift; and here is

(Testimony of W. H. Woolridge.)

hole No. 3. This (representing it) would be the drift from hole No. 3.

Q. Holes No. 2 and No. 3 here—do they represent the holes No. 2 and 3 as marked on the diagram of the claims? A. Yes, sir.

Mr. MILLER.—We desire to offer this in evidence.

The COURT.—It may be admitted in evidence as illustrative of the testimony.

OSCAR GIBBS, a witness produced on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct Examination.

(By Mr. MILLER.)

Q. What is your business? A. Mining.

Q. How long and where have you mined?

A. I have mined in various parts of the world. I have been mining for the past 25 years. I have been mining in Fairbanks Creek and Cleary for the past year—a little over twelve months now. I went out to Fairbanks Creek about the 3d of June, last.

Q. How long did you mine at Fairbanks Creek?

A. I mined on Fairbanks Creek whenever I could get anything to eat. I mined there from June until early in this March.

Q. State if you know anything about placer mining claims Numbers 3 and 4 Above on Fairbanks Creek, Alaska, in the Fairbanks Mining District?

(Testimony of Oscar Gibbs.)

A. Well, I think what I know about Number 3 and 4 is what bears on this case.

Q. Is what?

A. The object that I am here for I suppose is about it—what I know about the holes that I saw. At Mr. Nelson's request I went up there in company with McKay to look up some holes that had been put down by Nelson and Hensley. I saw the hole on No. 4 pointed out by Nelson, on the right limit. There was also a hole in the center of the creek, and a hole on the right limit. Nelson explained to me what he wished me to do. He wanted me to examine the hole—that is, the hole that he told me had been put down by Meehan. I went down to the hole on the center of the creek and we made measurements and found the depth of the hole was 17 feet. There was a drift extending upstream from the hole of Meehan's and the drift was 12 feet long from our measurements. We got our measurements above on the surface and below from a plumb line. The measurements that we obtained was 9 feet on the surface and the drift below was 12 feet. At the bottom of the hole the drift was not a straight drift. It had a tendency to curve, and it was decidedly curved to the left. Whatever the idea was in driving the drift that way I cannot say—

Mr. CLAYPOOL.—We object to the witness stating his opinion as to what the idea was.

The COURT.—Just tell the facts as you found them.

(Testimony of Oscar Gibbs.)

A. Well, it appeared to me that the drift had been driven in there with something behind it. Whatever motive was—

Mr. CLAYPOOL.—I object to the witness purposely going out of his way in this manner.

The COURT.—State the facts only. Don't give your own ideas.

A. Ten feet from the hole that was sunk, on the right end of the side of the drift, there was a small piece of a glacier there, which I should say was the bottom of an old shaft that was sunk, from the color of the glacier which was black. I have encountered it dozens of times in the upper country, both in creek and bench with steam points both on creek and bench, and I kind of said to myself that it was the bottom of the hole and that—

Mr. CLAYPOOL.—Now, here the witness is going out of his way again.

The COURT.—Just state the simple facts—not your own opinion.

Q. Tell what you actually saw.

A. What I actually saw was a piece of glacier on the right-hand side of the hole.

Q. State the character of the glacier and the size of it.

A. The character of the glacier I should judge would be about 5 by 6. I don't know whether my hands is

(Testimony of Oscar Gibbs.)

that size. A little larger than my hand—a little higher but about the same length. That was showing up on the right-hand side and the drift had a curve to the left, We ascertained the direction of the old hole by placing a stick in the bottom, or rather in this hole the stick was placed on top, and I could look along and see the direction of what we presumed was the mouth of the old hole.

Q. About how much variation was there from the straight line to the old shaft?

A. There must have been at the least calculation—well that is a mighty hard thing to determine exactly—there must have been about 3 feet of a variation.

Q. State if this glacier extended below the bedrock or below the drift of Meehan's hole?

(Objection as leading and suggestive.)

The COURT.—Just state where it is.

Q. State the depth of the ice shaft, if you know.

A. I think I shall explain that. It is about 8 inches from the bottom of the drift that was run by Meehan—about 8 inches above the bottom. It was 8 inches of ice here supposing this was the bottom of the drift which would occur, I presume, because the bottom of the hole is round. When the fires burnt out they wouldn't burn out square into the corners.

Q. State as to whether the ice column projected into—

Mr. CLAYPOOL.—Oh, just state how it was.

(Testimony of Oscar Gibbs.)

A. The ice was there just the same as you would take that book and place gravel around it—so. There is the gravel here— as though that book had been placed against some gravel and you just expose this part of it.

Q. Can't you be more definite as to where this was with reference to the line of the shaft on the side where the ice was exposed?

A. I don't understand that question. Will you please explain it?

The COURT.—I think the Court understands where that piece of ice is Mr. Miller, although the Court does not wish to keep you from having this particular witness give his evidence fully about it.

A. I should judge that that ice that we exposed there—I didn't have a pick at the time and moreover I don't know whether it would have been right for me to have done any picking there. I think it would have taken very little to have proved that that was the bottom of the shaft.

Mr. CLAYPOOL.—It seems to me that is the witness' opinion again.

The COURT.—Keep to the actual appearances—what you saw there.

A. I think that is about all I know about that hole.

Q. State on which side of the hole the ice was.

A. On the right-hand side looking upstream.

Q. On which side was Nelson & Hensley's?

A. On the upstream side.

(Testimony of Oscar Gibbs.)

The COURT.—The drift?

A. Nelson and Hensley's hole is sunk down there and Meehan's hole is immediately below it.

Q. Where is the drift?

A. The drift is running upstream from Meehan's hole.

Q. On which side of Nelson's and Hensley's hole is it?

A. On the left looking upstream.

Q. Whereabouts is this ice?

A. On the right-hand side of the drift.

Q. With reference to Nelson and Hensley's hole?

A. The ice is on the right-hand side of the drift and would be on the left-hand side of Nelson and Hensley's hole looking upstream.

Q. Where is that ice exposed with reference to Nelson and Hensley's supposed shaft?

The COURT.—I think that calls for a conclusion of the witness. Let him state the facts and the Court will draw its conclusions.

Q. Did you notice the old shaft or drift of Nelson and Hensley? A. I did.

Q. What does the old drift or shaft look like—explain it?

A. The old shaft is invariably caved in from the top. Do you mean to ask me this with relation to where it was situated?

Q. What was the appearance of that?

(Testimony of Oscar Gibbs.)

A. The appearance of that was like any other old hole that had been left to remain standing until the ground off the top caved in and the top of it would naturally be enlarged. It was covered with ice and snow at the time, but we judged from its position. That is the way we obtained our measurements.

Q. How much do they usually cave in from the top?

A. Sometimes the shaft will cave in more from one side than from the other. I have noticed that frequently in the holes that I have sunk myself.

Mr. CLAYPOOL.—Does the Court desire an opinion on that proposition? We simply ask what did happen in this case.

The COURT.—State what the condition of this shaft was as shown on the surface of the ground—what the depression looked like—whether it was caved in on one side—whether it was filled with snow, and so on.

Q. Go on and state all about it.

A. The depression in the surface was larger than the hole possibly was. A hole will cave in quite a considerable if has remained with water in it.

Q. How much larger than the hole made by Nelson and Hensley?

A. I couldn't state positively owing to the snow—I should judge it would be about 6 feet in diameter.

Q. What appeared to have been the depth of it from the appearance of it as you saw it?

A. Nelson's hole? That I could not state. You see

(Testimony of Oscar Gibbs.)

an old hole will fill right up to the surface. It was filled up to the surface with ice.

A. State what you know about hole No. 3 or the hole nearest to the right limit of the claim.

A. The right limit hole we measured and the depth was 22 feet. Our surface measurement was 10 feet. The drift also was taken of it in measurements and we measured from a plumb-line also. The direction of the drift appeared to me to lead to the left of the hole. I would not consider that it was a drift. It was only a small shovel hole that was at the back there—very small, just about the size of a tomato box at the back. Just so that you could get a shovel in and draw it out.

Q. State how you obtained your measurements and what they were and all about it.

A. I think I explained that a moment ago—all about it.

The COURT.—Yes, I think the witness has explained that very fully already.

Q. State if you have any knowledge of the variation of the drift of the shaft from the supposed Nelson and Hensley shaft.

A. At the back end of the hole it must have varied at least 3 feet. We obtained the direction of that hole. It was getting a little dark but I placed the stick in the bottom of the hole looking right at the center of the drift on the back and left the candle there and when I got on top there was the stick pointing off to the left and there was Nelson's hole to the right of the stick.

(Testimony of Oscar Gibbs.)

Q. Who was with you?

A. McKay and Nelson.

Q. Anyone else? A. No, sir.

Cross-examination.

(By Mr. CLAYPOOL.)

Q. What time of year was this?

A. The 12th of February, 1904.

Q. What was the condition of the ground generally as to snow and ice about that time?

A. There was quite considerable snow.

Q. Heavy snow on the ground?

A. Well, there was not any very heavy snow last winter.

Q. As heavy as during the season? A. Yes, sir.

Q. About how deep?

A. Probably 12 or 13 inches on the level.

Q. From what do you judge that the size of the top of the hole was only 6 feet?

A. I could see the edge of the ice from where it had been broken.

Q. On the edge of the hole? A. Yes, sir.

Q. How could you see the ice when there was snow on the top of it?

A. There was a hole cut in that ice.

Q. From the top of the hole? A. Yes, sir.

Q. Do you know who cut it? A. No, sir.

Q. Do you know what particular place on the hole

(Testimony of Oscar Gibbs.)

this ice was cut—whether it was in the center or on the side?

A. I think myself it was cut from about the center to about the side.

Q. On what do you found that opinion?

A. I think I can explain that.

Q. Well, that is what I meant to ask you to do.

A. This hole was not filled right up to the surface with ice and if there is a depression on the surface and the snow falls on it the wind blowing it about will leave a little dust around the hole or in any other place that there is a depression in and that is just what occurred there.

Q. You say that a hole had been cut in this ice and the ice and snow thrown out to one side.

A. That I did not say.

Q. Well, was it so or not?

A. Possibly it had fallen in.

Q. There was a hole cut in the ice then and the snow had fallen in the hole?

A. I suppose that could have occurred.

Q. It did occur in this case?

A. I don't know as to that.

Q. Did you examine it to see?

A. I don't think there was any inside.

Q. Well, did you do that? A. No, sir.

Q. Did you see any ice or snow taken out of this hole round about there? A. No, sir.

Q. A hole in the ice had been cut? A. Yes, sir.

(Testimony of Oscar Gibbs.)

Q. You don't know in what particular region of the shaft this ice hole was cut?

A. I have said already it was cut from the center to the outer rim.

Q. I want you to explain why you say that.

A. I think I have explained that already pretty fully.

Q. Well, please explain it again.

A. I explained to you that the outer edge of the hole I should judge would be about where the depression in the snow ceased.

Q. That was the center of the depression.

A. It was just from what I should judge was the center of the hole to the outer rim.

Q. From the depression in the snow generally left at this ice hole that appeared to be the dimensions as shown by the snow?

A. About six feet in diameter, as I have stated already.

Q. What would they indicate as to the size of the hole underneath the hole?

A. It would indicate that there must have been a hole there. I forget the exact figures now to find the circumference from the diameter. Something like three times and a third, is it not?

Q. That is what you judged the size of the hole from?

A. Yes, that is the condition in which I found it.

Q. Now, as a miner don't you know as a matter of fact that these holes are generally of uniform size?

(Testimony of Oscar Gibbs.)

A. They dig them square but if you leave them stand they will cave in.

Q. What is the general size of the prospect hole?

A. It is about five feet by 2 feet, 6 inches.

Q. You don't know what the size of this one was originally?

A. No, sir.

W. G. CRABBE, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct Examination.

(By Mr. MILLER.)

Q. What is your business? A. Miner.

Q. Where were you last winter principally?

A. On Fairbanks Creek.

Q. Whereabouts on Fairbanks?

A. On 1 Above and 3 Below.

Q. What doing?

A. I was putting a hole down on 1 Above—I had a lay there.

Q. State if at any time last winter you went upon 3 and 4 with a view of inspecting some work supposed to have been done there by Meehan and Larson.

A. Me and Woolridge and Steelsmith and Geo. Ashenfelter went up to look over the work that had been done and measure the ground. We went up to 3 and 4 about where the line was between 3 and 4 and crossed over and came to the first hole. It was glaciated over the top so we could not see anything there, so we went

(Testimony of W. G. Crabbe.)

over to what I should call the second hole from where the trail is on this side and we measured the hole that Meehan had put down. It was right below the hole that Nelson had put in—about 10 feet below, I should judge, downstream. We measured the depth of the hole and went down the hole and measured the drift to where the other hole was that Nelson had put down.

Q. Regarding the middle hole of the three next to No. 2 state what you did there.

A. We went to work there and laid a pole across the top as near as we could judge fair up and downstream with the other hole and went down below and measured it. Then we measured the distance of the hole back—each of them at the drift. They had drifted back about 10 feet I think. I have the figures of it. I put them down when I was down there.

Q. Can you refer to the figures and tell exactly?

A. I think I can.

(Witness here refers to a note book.)

Q. Who made that? A. I made this myself.

Q. State the depth you went in the drift.

(Object as leading; objection sustained.)

The COURT.—When was it made?

A. On the 24th of December.

Q. At this place? A. Yes, sir.

Q. Does that show the depth measured from the surface down? A. Yes, sir.

(Testimony of W. G. Crabbe.)

Q. What is that? A. Sixteen feet and 7 inches.

Q. And the depth of the drift—the extent of the drift? A. Twelve feet and 2 inches.

Q. In what direction was it?

A. Running upstream.

Q. In what direction with reference to Nelson and Hensley's shaft?

A. It was upstream toward their shaft.

Q. State what measurements you made with reference to its striking this shaft.

A. It had run right back by this shaft, as near as we could tell. It bore off a little to the left and right down in there—there was a small piece of ice that looked like the bottom of the hole.

Q. How did it look?

A. Something as if there had been a seepage of water running in there.

Q. How much is this ice?

A. There was about 10 or 12 inches probably in sight—might not be quite that size.

Q. On which side?

A. On the right-hand side as the drift ran out of the hole.

Q. On which side of the drift was the Nelson and Hensley shaft.

A. On the right-hand side going upstream.

Q. How near was the ice to the end of the shaft?

A. Within about 2 feet.

(Testimony of W. G. Crabbe.)

Q. Can you state how much this shaft varied to the left of the Nelson and Hensley shaft?

A. I didn't figure it varied over about 2 feet.

Q. What did you do ascertain what it varied, if anything?

A. We had the pole across the top and then went by that.

Q. How did you go by that?

A. From the string hanging down from above—the rope which we had there and let down, and then we sighted back from that.

Q. Were you in a position to see—to locate the end of the drift with reference to the pole across the top?

Mr. CLAYPOOL.—That calls for a conclusion of the witness. The Court is a judge of that.

Q. State your position.

A. At the bottom of the hole and Woolridge holding a candle at the back of the hole where it had drifted in.

Q. Tell what you know about hole No. 3. That is, the hole nearest to the right limit of the claim.

A. We went to hole No. 3 and measured that from the top—put the same stick across to get the center location of the hole—it was 22 feet and 8 inches deep. The length of the drift was 10 feet 4 inches as it ran in and as near as we could come to telling from our pole on the top, it was bearing off to the left.

Q. How much?

(Testimony of W. G. Crabbe.)

A. About 4 or 5 feet anyway at the least. I could not exactly tell. The angles was not taken.

Q. Could you tell whether it would strike the Nelson and Hensley shaft from what you saw?

A. I should not judge myself that it would strike the Nelson and Hensley shaft at all.

GEORGE ASHENFELTER, being produced as a witness on behalf of plaintiffs, testified as follows:

Direct Examination.

(By Mr. MILLER.)

Q. Where do you live? A. On Fairbanks.

Q. What is your business? A. Mining.

Q. How long have you lived in Fairbanks?

A. Eighteen months.

Q. Are you acquainted with mining claims Nos. 3 and 4 Above on Fairbanks Creek? A. I am.

Q. Whereabouts have you been located out there with reference to those claims?

A. Opposite No. 3 Above.

Q. Do you own property on Fairbanks Creek?

A. Not on Fairbanks Creek proper but on benches on Crane Creek. Discovery on Crane Creek and Bench opposite 2, 3, and 4 Above.

Q. Do you know the bench opposite 3 Above on Fairbanks Creek? A. Yes, sir.

Q. When were you on that and during what time?

(Testimony of George Ashenfelter.)

A. I went over to Fairbanks Creek a year ago round the 1st of April and I have been there ever since.

Q. Do you know of Meehan and Larson being there any time during April or May?

A. I think Meehan was out there in the latter part of April.

Q. Was he out there before—during the latter part of that winter? A. Before April?

Q. When was he first out there during the spring of 1903?

A. I could not just say the date—somewhere along about the 20th of April—the latter part of April.

Q. Were you there about No. 3 after that during the summer months? A. I was.

Q. Are you familiar with the work Nelson and Hensley have done out there?

A. I can't say that I am familiar with it—I have seen the holes.

Q. Did you see the holes before they filled with water? A. No, sir.

Q. Did you see them before they caved in?

A. They had caved some before ever I seen them.

Q. Do you know when they were made?

A. I do not.

Q. Do you know about when?

A. No, sir; I could not say that—I kept no track of Fairbanks Creek.

Q. When did you first see them?

(Testimony of George Ashenfelter.)

A. I seen one of them just from a distance in April—just noticed it.

Q. When did you see the others?

A. Just about the time the snow was going off.

Q. What was the appearance of the dumps of dirt that had been taken out of it—what you could see of them—what did they look like?

A. I could not say as I took particular notice of the holes. I went up there with Billy James to get something—no, it was with his partner, and we never paid much attention.

Q. How were the holes as to size—state what your impressions were as to the probable depth of the holes.

A. Well, I could not do that.

Q. You can give a general idea—just state what your impressions were.

Mr. CLAYPOOL.—I think that is calling for an opinion of the witness.

The COURT.—He may answer the question—he may tell whether they were 6 inches or 60 feet.

A. I would not put it anywhere there—I would say anywhere from 10 to 15 or 20 feet. I would not give any positive figure because I didn't pay much attention to it myself.

Q. Do you know the depth to bedrock in that locality?

A. I could not say as I do on this side of the creek.

(Testimony of George Ashenfelter.)

Q. Did there appear to be as much work done on the holes on the left limit as on the hole on the right limit?

A. I don't know. There was a good deal of bedrock around that hole on the left limit in the creek. I could not say as to the work on the right limit. I panned from that hole at the left limit, but I never did pan from the other holes.

Q. Did you notice the hole on the right limit particularly.

A. On the left limit—on the lower end of No. 4.

Q. You didn't go over to the holes so much?

A. No, sir.

Q. Did the size of the dumps appear to be as much one place as the other?

A. I could not hardly say as to that whether they were or were not—I didn't pay much attention to the holes.

Q. What were the depth of the holes when you saw them as far as you could notice?

(Objection as repetition. Objection sustained.)

Q. What did you do or what did you ascertain regarding those holes, if anything, at the time you were there with those parties that you spoke of?

A. Woolridge asked me if I knew where the holes were and I told him I did. He asked me if I would go and show him where the holes were. I went with him and helped lower him into the hole and draw him out and laid the stick across the hole and took the measure-

(Testimony of George Ashenfelter.)

ments. I took them as near as I could across the center of the hole.

Q. Did you go into the hole? A. I did not.

Q. Do you know the depth of it?

A. I could not say anything more than what I had read to-day.

Cross-examination.

(By Mr. CLAYPOOL.)

Q. Did you go to the other holes at all?

A. I went up there.

Q. Referring now to the time when you say you saw considerable bedrock last summer?

A. I was up there twice—once when I went after someone and once going up the hill I passed by the holes.

Q. Was there a windlass at that time there?

A. There was.

Q. At which hole?

A. I would not say whether it was 2 or 3 but one of those two.

Q. Can you state now or did you observe how much gravel there was about that hole where the windlass was?

A. I didn't pay much attention to it. The first time I was there there was considerable snow on the ground and the second time we was just passing up going to Bear Creek.

JAMES McPIKE, a witness produced on behalf of the plaintiffs, being duly sworn, testifies as follows:

Direct Examination.

(By Mr. MILLER.)

Q. What is your business? A. Mining.

Q. Where have you been mining?

A. Fairbanks.

Q. Whereabouts with reference to No. 3 and No. 4 Above on Fairbanks?

A. I was there at the time this man Mr. Nelson was working there.

Q. When was that according to the best of your recollection?

A. The latter part of January and February.

Q. Of what year?

A. 1903 I was there, I guess about a week or 10 days ahead of these men.

Q. Who was the first person to commence work on Fairbanks Creek?

A. Jean Farrington, I think.

Q. Who was the next?

A. I think I was the next.

Q. And who next? A. Nelson, I believe.

Q. Were there any holes to bedrock on Fairbanks Creek at the time Nelson and Hensley commenced work there? A. I don't think so.

Q. When did they begin with reference to the time you began?

(Testimony of James McPike.)

A. It must have been along in February about the 5th or 6th, somewheres along there, I believe.

Q. How many days apart were you in commencing work there?

A. That I could not state for certain. I must have been at work there a week or ten days ahead of these men.

Q. State who put the first holes to bedrock on Fairbanks.

(Objection as immaterial. Objection sustained.)

Q. Had any one gone to bedrock on that creek at the time they commenced work there?

A. Not that I know of.

Q. How near were you to their work at the time they were working there in February.

A. I was on 1 Above and they were on the upper end of 3 Above, I believe.

Q. Were you about where they were working occasionally?

A. I think I was up there about three times while they were at work there.

Q. State to the Court all you know about it.

A. I was working up to their place when we were working there about three times, I guess.

Q. Who else was in the vicinity of those claims at the time they were working there besides yourself or within four or five claims of them?

A. I don't know of anybody.

(Testimony of James McPike.)

Q. There were not many people on Fairbanks Creek at that time? A. No, sir.

Q. State what you saw when you went up there?

A. I went up there the second time and they had one hole to bedrock—the first one they started.

Q. That was when you went up the second time?

A. Yes, sir.

Q. What were they doing when you went up the third time? A. Working on two other holes.

Q. Did you go to the hole nearest the right limit of No. 3? A. Yes, sir.

Q. Did you meet Nelson and Hensley there at that time? A. Yes, sir.

Q. What were they doing?

A. Hoisting out of the hole.

Q. About how deep was the hole at that time?

A. It looked to be about 15 or 16 feet, I should judge.

Q. That was hole No. 3.

A. The farthest to the right limit.

Q. What do you know about No. 2.

A. I have never been there when they were hoisting out of that hole. There was still a fire there at the time I was there.

Q. Had much dirt been taken out of it?

A. Quite a little.

(By the COURT.)

Q. How deep was it to the best of your judgment?

(Testimony of James McPike.)

A. I should judge it was about 15 feet. Somewhere about there—about 15 or 16 feet.

Q. That is hole No. 2? A. Yes, sir.

Q. Did you see the holes afterwards?

A. No, sir.

Q. Did you see the dumps and the dirt taken out?

A. At that time but not afterwards.

Q. Did you afterwards? A. No, sir.

Q. Do you know how long they worked after you were there?

A. I should judge they would be working a week after I was there.

Cross-examination.

(By Mr. CLAYPOOL.)

Q. How do you know they were working a week. What did you judge that from. Did you see them?

A. I was working there a week or 10 days after I was the last time.

Q. That is the last you were working when you were there? A. Yes, sir.

Q. When did you next see these men?

A. We all left the creek together.

Q. They came up where you were?

A. I was on my way coming up to where they were.

Q. You went up with them? A. Yes, sir.

Q. That is all you know about the work?

A. Yes, sir.

Q. You don't know whether they worked it or not?

(Testimony of James McPike.)

A. I could see smoke there from the holes from where I was.

Q. As near as you can remember it would be a week after that? A. Yes, sir.

Q. How many holes—one or two? A. One.

O. A. NELSON, recalled, testified as follows:

(By Mr. MILLER.)

Q. Will you state the size of the shaft you made?

A. It was just big enough to work in with a short handled shovel.

Q. I was asking you the size.

A. About $2\frac{1}{2}$ by $4\frac{1}{2}$ and it may be by 4.

Q. Do you remember Mr. McPike having been up there? A. I do.

Q. Do you remember him having been there at the time you were working in shaft No. 3? A. Yes, sir.

Q. What depth were you down at that time, if you remember?

A. As near as I can recollect we were 4 or 5 or maybe 6 feet in the gravel.

Q. How deep was the hole entirely from the top?

A. From 12 to 13 feet of muck. It was too deep to throw out with a shovel—we had to use a windlass.

Q. What was the depth from the surface?

A. Sixteen or seventeen feet.

Q. How long did you continue there after McPike was there? A. About 10 days.

(Testimony of O. A. Nelson.)

Q. Did anyone with you inform you regarding the lines between 3 and 4? A. They did not.

Q. You went and located them yourself?

A. Yes, sir.

Q. State if you took any measurements at the time as to the distance you sunk these holes—No. 2 and 3—from the center stake. A. I stepped them off.

Q. Were there any corner stakes at that time?

A. I could not find any.

Q. Did you afterwards make any effort to get the exact distance from the center stake? A. I did.

Q. In what way and how? A. Tape line.

Q. How many feet was it?

A. Two hundred and seventy-five.

Q. Whereabouts was this hole? In this mining district?

A. In this mining district—Fairbanks District.

Q. In what State, territory or district?

A. Alaska?

BEN CHASE, a witness produced on behalf of the plaintiffs, being duly sworn, testified as follows:

(By Mr. MILLER.)

Q. Have you been up on Fairbanks Creek at any time? A. I have.

Q. Do you know anything about the location of 3 and 4 Above? A. Yes, sir.

Q. You know the claims? A. Yes, sir.

Q. Have you ever been on them? A. I have.

(Testimony of Ben Chase.)

Q. Did you ever examine the initial or center stake of 3 and 4? A. Yes, sir.

Q. On the boundary between 3 and 4?

A. Yes, sir.

Q. Do you know anything about the distance of those shafts from the center stake? A. Yes, sir.

Q. How did you ascertain it?

A. By measuring with a tape line.

Q. State the distance.

A. From the center stake to the outside hole 275 feet.

GUSTAV A. LAM, a witness produced on behalf of the plaintiffs, being duly sworn, testified as follows:

(By Mr. MILLER.)

Q. Where do you reside?

A. At Fairbanks or over in Graehl City.

Q. Are you familiar with the mining claims out there? A. I have been out there twice.

Q. Do you know anything about 3 and 4 Above?

A. A little.

Q. Did you ever examine the center stake between 3 and 4? A. I did.

Q. Do you know anything about the distance of these shafts that have been testified to from that center stake?

A. Two hundred and seventy-five feet to the outside shaft.

Q. On which limit? A. Right limit.

GEORGE STEELSMITH, recalled, testified as follows:

(By Mr. MILLER.)

Q. State what this paper is.

A. I have here a diagram of the prospect holes showing the relative positions of the holes dug by Nelson and others and also the holes and the drift dug by Meehan near the said holes known as No. 2 and 3 on the upper end of creek claim No. 4 Above Discovery on Fairbanks Creek in the Third Division of the District of Alaska.

Mr. CLAYPOOL.—I wish the witness to note on the diagram that the examination was made at a certain date.

The WITNESS.—There is a certain date that this examination was made.

The COURT.—Write “Examination made on the ——— day of ———.”

(Witness writes “Examination made on the 24th day of December, 1903.”)

The WITNESS.—This diagram was made from the examination of the work made on the 24th day of December, 1903.

Mr. MILLER.—There is one fact that I wish to testify to.

H. J. MILLER, a witness produced on behalf of the plaintiffs, being first duly sworn, testified as follows:

I will state that I prepared a deed for Messrs. Nelson and Hensley sometime in May. I advised with them with a view to a settlement of their claims in regard to the mining claim No. 3 Above on Fairbanks Creek and that later and about the early part of July they turned all their matters over to me.

The COURT.—What year are you talking about now?

A. 1903, your Honor. They requested me to close up the matter, and secure their claim to an undivided one-half interest in the claim under their contract; that I referred to one Meehan—

Mr. CLAYPOOL.—And they didn't settle it up and finally brought suit and that is all there is about it.

The COURT.—Yes, unless there are some statements that were made, of importance.

Mr. MILLER.—And once or twice to Mr. Larson and Mr. Larson told me about August that he thought the boys did the work and that so far as he was concerned they should have their claim, and that sometime later I presented certain papers to Mr. Meehan and insisted on his signing them conveying an interest in the claim to Nelson and Hensley, and he refused.

The COURT.—Is that all?

Mr. MILLER.—That is all.

Plaintiffs rest.

THOMAS LARSON, one of the defendants herein, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. Thomas Larson.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. One of the parties to this agreement made with Nelson and Hensley? A. Yes, sir.

Q. About sinking 3 holes on these claims?

A. Yes, to bedrock.

Q. You have heard the testimony of the last witness on the stand? A. Yes, sir.

Q. You may state to the Court whether or not you ever told him anything of that kind. A. No, sir.

Q. Did you ever have any conversation to that effect?

A. I might have had some conversation about the holes.

Q. Did you ever tell Mr. Miller that they had done the work? A. No, sir.

Q. Did you ever say anything like that?

A. No, sir.

Q. When was it that you first went down to those claims with reference to the work claimed to have been performed by Nelson and Hensley—about when was it when you first went down there—what was the date when you first went there after they were supposed to have done the work—do you remember when they quit working?

(Testimony of Thomas Larson.)

A. It was some time in July. I was over on Gold Stream most of the time.

Q. About a year ago now? A year ago this month?

A. Yes, sir.

Q. Calling this hole No. 1, this No. 2 and this No. 3, I will ask you to state to the Court if that represents the situation with approximate correctness?

A. Yes, it is somewhere about right. They are all on the right limit from the center stake.

Q. Did you make an examination of the work that had been done there? A. Yes, sir.

Q. When the first time?

A. Made a surface examination sometime in July.

Q. Who was with you?

A. I believe Mat was with me.

Q. Anyone else? A. No, sir.

Q. What did you do?

A. Went over and poked sticks in the holes.

Q. Anything else?

A. We went to the farthest hole and by the surface you could see that the dirt that had been taken out there there was nowhere near the amount of dirt that would indicate the output of that hole.

Q. Before going to that, I will ask you about the first hole—No. 1—as to whether or not bedrock had been taken out? A. That hole went to bedrock.

Q. There had never been any trouble about that hole? A. No, sir.

Q. What was the condition of No. 2 at that time?

(Testimony of Thomas Larson.)

A. It didn't show any bedrock on the surface. You can generally see if there is any bedrock comes out of the hole.

Q. Well, was there any there? A. No, sir.

Q. What was the extent of your examination—how carefully did you examine?

A. Went over the gravel all ourselves. There was nothing there that would indicate bedrock to me.

Q. Coming to the third hole, what did you find there in the output?

A. I should judge it went through the muck, it seemd to me to be scattered all over the top of the holes.

Q. At this visit did you go into either of the holes number 2 or 3?

A. No, sir. Could not go into them, they were full of water.

Q. What else did you observe—were they caved in any? A. Some.

Q. Which one?

A. They were all more or less caved.

Q. Which one the most?

A. The one on the creek—the one with the bedrock.

Q. What about those other two, where they were caved in? A. Oh, well, if you ask me—

Q. If you don't remember, say so.

A. No. I would not take them to be very badly caved in.

Q. Was that the extent of your examination at that time? A. Yes, sir.

(Testimony of Thomas Larson.)

Q. When did you next go on that ground with reference to that work said to have ben done by these men?

A. I have been up and down that creek I could not tell how many times.

Q. I mean next time you made any examination of the work—if you took any other measurements or if you did anything of that kind—state as nearly as you can remember.

A. I think I made an examination in April.

Q. Of this year? A. Yes, sir.

Q. When you went there in April what was the condition of the ground with reference to those holes 2 and 3. Had the holes been sunk or drifted?

A. Yes, I think they were drifted.

Q. What did you do then?

A. I thought I could get some witnesses and get them to go down the hole?

Q. With you?

A. I stayed up above and let them do the examining.

Q. What did you do, if anything?

A. I tried to help them up and out of the hole.

Q. Did you at that time make any examination of this ground? A. I left that to the witnesses.

Q. Did you take any measurements?

A. No, sir.

Q. With reference to the direction of these drifts did you do anything on the surface by way of assisting the witnesses whom you say you sent below in order to ascertain the direction of the drifts?

(Testimony of Thomas Larson.)

A. I helped a little, but there was a man with me so I let him do it.

Q. What was done about that in your presence?

A. Judging from above, from the surface, this hole No. 2 bore off to the left.

Q. About how much?

A. I should judge from above that it just about would strike the corner of No. 2.

Q. What about the other one—No. 3?

A. I was there when they measured this hole and measured the drift and I found that this hole was just as straight for that other hole as any engineer could do it.

Q. The indications from the surface were that they went right through? A. Yes, sir.

Q. What method did you pursue in ascertaining it?

A. I was up above and told the men what to use. They used a stick down below and used a tape line up on top and a compass I had too and I put that down on the memo.—the center from one hole to the center of the other.

Q. Have you that memo? A. Yes, sir.

Q. When was it made?

A. It was made in April.

Q. At the time of doing this work?

A. Yes, sir. Mr. Ziemer was with me.

Q. You say you didn't go down the holes yourself at any time?

(Testimony of Thomas Larson.)

A. I went down but I didn't go down as a witness or anything. I let the others do that. I didn't go down to take the dimensions.

Cross-examination.

(By Mr. MILLER.)

Q. Who were these witnesses you had there?

A. It was Nathan Ziemer.

Q. Who else? A. Jack McCormack.

Q. Who else? A. Jack Crowley.

Q. Who else? A. George Bell.

Q. Who else? A. That is all.

Q. When was this?

A. Sometime in April—I could not say the date.

Q. What time in April?

A. I think it was around the 12th—I could not just say. I have got memorandums when I went out.

Q. Where is it? A. Out on the creek.

Q. The shafts on the creek like this were more or less filled with water?

A. There was not any water there.

Q. Where? A. In the shaft.

Q. How was it in No. 2?

A. There was a little piece of ice—that is the only thing I could see.

Q. In the bottom? A. Yes, sir.

Q. That had been caused by the water running in from the top and freezing?

A. I could not really say.

(Testimony of Thomas Larson.)

The COURT.—The new shaft or the old?

Mr. MILLER.—I am talking about your shaft and drift that you made to test Nelson and Hensley's shaft—the middle hole.

A. I didn't see any water except what I just told you.

Q. There had been water in there and it had frozen?

A. I could not see any.

Q. You had nothing to do with the work yourself?

A. Not personally.

Q. Why did you go to these holes in April?

A. To examine them.

Q. Why did you go to examine them?

A. Because it was to my interest to examine them.

Q. Did you notify Nelson and Hensley or anyone else representing them?

A. Not at that time but we told him last fall that we would pay his expenses if he would come out and just watch us examine them holes; that we would pay them just as much wages as they could get any place else.

Q. Did you go and tell them? A. No, sir.

Q. Well, talk about something you know about.

A. Yes, sir, I did tell him.

Q. You didn't notify them when you went there in April? A. No, sir.

Q. You testified that you first went out there in July after this work was done on the part of Nelson and Hensley? A. Yes, sir.

(Testimony of Thomas Larson.)

Q. Did you meet them any time shortly after they finished the work and quit work?

A. The only time I met them was when they finished the work and came over when I was on Gold Stream.

Q. Why didn't you go back then and look at those holes?

A. When we made the suggestion of going over there they told us it would take us two days to get over the snow, and it kind of discouraged us from going over.

Q. They had been over there and came and got grub and went back again? A. Yes, sir.

Q. You were discouraged from going over at that time?

A. If you had done as much mushing about the country as I have done you would be discouraged.

Q. State to the Court when the first trip you made over there to examine these holes was. A. In July.

Q. When was Meehan over?

A. Some time in April.

Q. Of what year? A. 1903.

Q. Was Meehan with you in July?

A. Yes, sir.

Q. What were you over there for?

A. We had quite a few interests over there.

Q. Did you make it your business while you were over there you and Meehan while you were over there to examine these holes?

A. Yes, sir. We went to these holes.

Q. What did you go to examine them for?

(Testimony of Thomas Larson.)

A. Because we were told that they looked suspicious—that the work hadn't been done on them.

Q. And this was the first time you made an effort to find out?

A. For myself—yes, sir—it was the first time I did.

Q. Meehan was with you? A. Yes, sir.

Q. State what you did—I believe you stated you put a stick in the hole.

A. Yes, just to see the depth.

Q. How deep were they?

A. I should judge perhaps about 8 feet—the upper one was about 8 feet.

Q. Which was the upper one?

A. On claim No. 3. I should judge it to be about 9 feet.

Q. I believe you stated on your direct examination that they had caved in some.

A. Yes, I believe they had caved a little.

Q. It was about this time of year a year ago that you were up there? A. Yes, about this time.

Q. A year ago? A. Yes, sir.

Q. How much water was there in it?

A. It was not quite at the top—perhaps a foot from the top.

Q. That is all the information you could get as to whether they had been to bedrock—by poking that stick into the water.

A. No, sir, the indications on the top, the ground and

(Testimony of Thomas Larson.)

the slope of the creek showed that there was not dirt enough on that one hole taken out of it—the hole showed that they had not went to bedrock.

Q. You just judge in a general way by the dirt taken out?
A. Well, I feel pretty confident.

Q. Isn't it true that when the snow goes off and the water is running it takes considerable dirt away with it.

A. Not so very much.

Q. And that the hole sloughing in, it also carries a portion of the dirt back into the hole?
A. Yes, sir.

Q. How much dirt had caved in from the bank, and how much had gone back into the hole.

A. It was not caved in very bad.

Q. You put a stick in No. 2 also—how deep did you find that was?
A. That was a good deal deeper.

Q. How much deeper?

A. We couldn't tell by poking the stick in—I guess 10 or 12 feet.

Q. That was No. 2?
A. Yes, sir.

Q. How deep was No. 3.
A. About 9 feet.

Q. How deep was No. 1?

A. I didn't measure that at all—I could not say.

Q. If they had stopped when they got to bedrock, there would be very little bedrock on the surface?

A. Yes, sir.

Q. They would take the gravel off and the gravel would be on the surface?

A. No, sir, the gravel would be on the surface.

(Testimony of Thomas Larson.)

Q. If they would take the gravel from the bedrock?

A. Yes, sir, the bedrock would be on the surface.

Q. If they had dug to it and left it in the hole?

A. I didn't catch the drift of the question.

The COURT.—I don't think that is very important—I think it is self-evident.

Q. You say No. 1 was on bedrock?

A. Yes, you could see the bedrock.

Q. Do you know how deep it was to bedrock?

A. No, sir.

Q. Do you know how deep it is now?

A. No, sir.

Q. These claims were not of much value, or of any known value when Nelson and Hensley went out there—they were simply wildcats?

A. There was not anything there of much value then.

Q. In July and April you knew that gold had been found on Fairbanks Creek and on this property as well?

A. Yes, sir.

Q. And you panned on No. 1, didn't you—the shaft that Nelson and Hensley sunk? A. No, sir.

Q. Did Meehan? A. I cannot say.

Q. Did he ever tell you so? A. I think he did.

Q. What did he get? A. He didn't say.

Q. State to the best of your knowledge did he ever state to you that he got 6 and 7¢ dirt?

A. I can't say he did.

Q. When did you sink these shafts?

(Testimony of Thomas Larson.)

A. Which?

Q. Shafts No. 2 and 3.

A. Some time in November, 1903.

Q. Why did you do it?

A. Because they felt pretty certain that the contract was not fulfilled and because we got reports from all around the country. The prospects in that one hole—No. 1—was what we had the reports about; that was what drew my attention to the fact that there was something that was not what it ought to be. There is people here testifying on this side that can tell you what prospects they got.

Q. What did they get?

A. Oh, they will testify after awhile. They got 12 pans that went 44¢ or something like that.

Q. That is the reason you sank those holes?

A. No, sir, we sank because we didn't believe they fulfilled their contract.

Q. Because you didn't know whether they did or not?

A. We had a good proof.

Q. This effort you made there to get a proof is the only proof you have?

(Objection as immaterial. Objection sustained.)

Q. Property constantly increased in value on Fairbanks Creek from the time these shafts were sunk?

(Objection as immaterial. Objection overruled.)

A. Yes, and who helped to increase it?

Q. Well, I don't care to talk about that. This claim you had refused \$50,000.00 for at that particular time?

(Testimony of Thomas Larson.)

A. No, sir.

Q. It was worth it, was it not?

By the COURT.—This is quite immaterial. I don't think the value has anything to do with it. He says that the property had constantly increased in value and that is admitted.

Q. You heard what some of these witnessess—Steel-smith and Woolridge and others—testified the other day? A. Yes, sir.

Q. You heard them testify about this shaft No. 2 that you sank there or caused to be sunk?

A. Yes, sir.

Q. Regarding this glacier or shaft of ice you came in contact with in sinking that drift, you heard them testify to that, now what do you know about it?

A. I saw the ice in the hole, but it was above bedrock.

Q. You have admitted bedrock in hole No. 2.

A. I never admitted that that was the bedrock. No, sir, I said to you that I could not see any bedrock on top.

Q. Has not Meehan admitted bedrock in No. 2 in your presence? A. I don't think he has.

Q. Have not men who worked on that drift told you that they were satisfied of it?

(Objection on the ground that the question is too indefinite.)

The COURT.—Ask specifically about the persons who were present and when and where it was.

(Testimony of Thomas Larson.)

Q. Haven't you stated in the presence of Mr. O'Neil that sometime during the early part of the winter shortly after the work was done you had conceded bedrock, except in hole No. 3, sometime after November?

A. No, sir.

Q. Well, when was it?

A. When I went down and saw that piece of ice I thought we were giving them that hole.

Q. Why didn't you give it them? A. No. 3?

Q. No. 3.

A. Why should I, can you tell me why?

The COURT.—Confine yourselves to the facts.

Q. You stated that your principal reason for testing these holes was because there was gravel thrown over the dumps and no bedrock in those two holes No. 2 and 3.

A. There is three holes that I spoke about the gravel being thrown out. Bedrock had been taken out in No. 2, but it looked as if they had tried to spread gravel over No. 3.

Q. Was there any bedrock on No. 2?

A. I could not see any.

Q. You could see as much on No. 2 as you could on No. 3?

A. Why, there was no gravel hardly at all on No. 3, in a deep hole like that. They had taken gravel out and spread it over the dump to make it show—just about three buckets.

(Testimony of Thomas Larson.)

Q. There was as much bedrock on 2 as on 3?

A. When you get to bedrock or close to it you can tell by the color of the rock and the size of the rock. When you find small pebbles that shows it ain't as if it was not anywheres near the bedrock. When you get big wash and you can see the sediment on them, it shows that it is getting close to bedrock in a gold-bearing creek.

Q. You could not find this evidence on No. 2 of being near to bedrock?

A. It looked as if it was near to bedrock. If it was not to bedrock it looked as if it was pretty close to it.

Q. You believed it was not the bedrock or you would never have been at the pains of sinking the shaft?

A. When we have to thaw we can sink 2 holes as quickly as one. We didn't investigate that very close.

Q. You didn't investigate 2 very close?

A. We didn't investigate 2 very close.

Q. You had no means of knowing whether Nelson and Hensley were right in their statements without a further examination and testiing things in the way you did by sinking shafts?

A. No, sir—well, perhaps we could someway by cleaning out the shafts.

Q. I talked with you several times last fall regarding this matter? A. I don't remember.

Q. You don't remember any conversation with me regarding the claim of Nelson and Hensley to this property? A. No, sir.

(Testimony of Thomas Larson.)

Q. Don't you remember a statement from me some-time about last August—

Mr. CLAYPOOL.—I don't know whether it is proper to impeach the witness by conversation with counsel for the other side.

The COURT.—The Court does not care to hear any-thing about any settlement, Mr. Miller.

Q. Do you remember a conversation with me about last August at Fairbanks here in which you stated that so far as you were concerned you would be glad to see the boys get something for the work that they had done out there? A. No, sir.

Q. Some conversation to that effect?

A. At what time?

Q. About last August or September?

A. No, sir.

Q. Well, when was the conversation?

A. I don't know of any such conversation.

Q. Well, some conversation along that line or to that effect?

A. No, sir, I can't remember anything like that.

Q. But you do remember my having spoken to you about it?

A. I can't really say—that is something that has es-caped my memory because we have spoken together whenever we met.

Q. Then the only means you had of knowing satis-

(Testimony of Thomas Larson.)

factorily that they were at bedrock till you sunk these shafts was by the surface indications there?

A. The surface indications and the prospect on that No. 1 hole.

Q. What was the prospect?

A. A pretty fair prospect, and that made us a little suspicious there when they didn't come to report to us what they had found.

Q. What did they find?

A. They had pretty fair prospects there.

Q. They had reported prospects?

A. Not the true ones.

Q. What did they report?

A. They reported that they got one pan about a cent or a cent and a half.

Q. What did you find?

A. I haven't panned it.

Q. You say you don't know what it was?

A. I have only got to take people's word for it that panned.

Q. You were suspicious simply because the property was valuable?

The COURT.—Counsel should not argue with the witness.

WILL A. BOSS, a witness produced on behalf of the defendants being duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. William A. Boss.

Q. Where do you live? A. Fairbanks Creek.

Q. How long have you lived there?

A. Since about the 1st of last October.

Q. What is your business? A. Mining.

Q. How long have you been engaged in mining?

A. About 21 years.

Q. How long in placer mining?

A. About 17 years.

Q. How long have you lived in the District of Alaska? A. About 17 years off and on.

Q. Are you acquainted with those claims No. 3 and 4 on Fairbanks that this law suit is about?

A. I am.

Q. You may state if you ever were on those claims and if so for what purpose.

A. I went to those claims about the 1st of last October—to No. 3 for the purpose of seeing if I wished to take a lay of No. 3. I went to Meehan when he was on the creek for a lay and asked him if he had any property he would give me a lay on.

Q. Well, you had a conversation which resulted in your going there?

A. Yes, sir. I went there and examined No. 3 to see

(Testimony of Will A. Boss.)

if I wished to take a lay. He told me that he understood it was going into litigation.

Q. What did you do?

A. I went there and borrowed a pan of Mr. Ashenfelter or the other man and went over to these dumps and examined the dumps and panned on 2 of the dumps.

Q. Take this map and this is supposed to represent hole No. 1 and this No. 2 and this No. 3—the upper and lower ends respectively of No. 3 and 4. You may state on what dumps you panned.

A. On No. 1. On the lower end of 4 and two on the upper end of 3.

Q. What examination did you make, if any, of the hole there?

A. I made an examination of the dump.

Q. To what extent?

A. To see what the gravel looked like—to see if there was any bedrock.

Q. What did you find?

A. I found considerable bedrock on the dump and gravel. I panned several pans and got what I should judge to be from 4 to 5¢ on the pan.

Q. What examination did you make of No. 2?

A. I examined that hole to see if I could find any bedrock and the amount of the gravel.

Q. What did you find?

A. There was no evidence of bedrock on the dump anywhere. I panned there and got some small light colors in the pan but nothing else.

(Testimony of Will A. Boss.)

Q. Did you go down into the hole?

A. I could not because there was water in it.

Q. I will ask you if it is not a usual thing to strike small light colors in holes of that kind before you strike pay.

A. Yes, sir.

Q. Such as you found on No. 2?

(Objection as leading. Objection overruled.)

A. Yes, sir.

Q. What did you find on No. 3?

A. I found muck and a very small quantity of gravel on the top. The muck was scattered all around the hole. On one side gravel was scattered over the muck. I took and panned and scraped the gravel to find out if there was any depth to it—in fact there was places where I could see the muck through the little gravel that there was there.

Q. Was that the extent of the examination?

A. No, sir—I examined these holes to see what state they were in—to see if there had been much caving.

Q. What condition were they in?

A. No. 1 was caved pretty badly—No. 2 was caved very badly, so badly that what little cribbing there had been had tipped over on the uphill side, so that it was on a level with the water. On the other side it was standing up. I went down to No. 3 and there was hardly any caving. There was no muck around the hole and the moss stood up pretty fresh. I could not see the cut edges of the muck. There was a spring on the property.

Q. Was there anything else in your examination at

(Testimony of Will A. Boss.)

that time that has any bearing on this controversy? I don't care to hear your general examination of the topography of the country.

A. Nothing that I can think of.

Q. When did you next visit the property, if you did visit it again?

A. The next day.

Q. Who was with you?

A. Nobody.

Q. What did you do that next day?

A. Almost the identical same thing except panning.

Q. When did you next visit the property?

A. I should judge it was about 10 days later.

Q. What was the occasion for your going?

A. I had taken a lay on a certain portion of the property?

Q. What did you do there?

A. I went there and started to build a cabin.

Q. Did you at any time have anything to do with the sinking of holes for Meehan and Larson and drifting?

A. About the 1st of October—I would not say exactly—no, the last part of October, I mean.

Q. Well, go on and tell the Court in your own way what you did at that time.

A. I was asked by Meehan to have a look at these holes as they were going down—and then he wanted me to get independent witnesses to examine the holes and testify if they were to bedrock.

Q. Did you do that?

A. I did.

Q. Did you examine the holes yourself?

(Testimony of Will A. Boss.)

A. I did and made a bargain with the men who were sinking the holes for the use of the boiler.

Q. With reference to the shaft sunk to drift No. 2 you may tell the Court the extent of that work.

A. The shaft was sunk to a distance of 17 feet and 6 inches to the top of bedrock and the drift started to run underneath the old shaft that was sunk prior to that.

Q. No. 2?

A. Yes, sir—that drift was run 12 feet and a half.

Q. What were the dimensions of the drift?

A. The drift, I should judge, was about 3 feet high where it started from the shaft—possibly a little higher. I should judge 2 feet and a half at the end after the last points had been taken out and the dirt cleaned out, and probably 2 and one-half feet wide.

Q. How did it bear with reference to the old shaft?

A. A little bit to the left. In a distance of 12 feet I should judge it was about 15 or 18 inches.

Q. Where did it strike the old shaft?

A. Under the uphill end of the shaft.

Q. How much of the old shaft did it expose?

A. I don't know.

Q. What did you find?

A. A continuous streak of gravel.

Q. In place? A. It appeared in place to me.

Q. How far was it from the bottom of the drift where it struck the old shaft to the bedrock proper—how far above bedrock?

(Testimony of Will A. Boss.)

A. I don't know as we ever struck the old shaft.

Q. Didn't this drift strike the old shaft of No. 2?

A. Not to my knowledge.

Q. Where did it bear with reference to where the old shaft should have been?

A. I think it struck the uphill end of it.

Q. How far were you from bedrock?

A. I dug in bedrock with a pick.

Q. In the bottom of the drift? A. Yes, sir.

Q. What was the top and sides?

A. Gravel all over with one exception—one little streak of frozen sand there 4 or 5 inches wide.

Q. With reference to the hole and the drift as to No. 3 you may go and tell the Court what you did and what the result was.

A. I was there on the windlass and down in the hole while the shaft was being sunk, and on the windlass all the time the drift was being drive. The hole was sunk 23 feet and 3 inches to the top of bedrock, and the drift was driven 11 feet and 6 inches. We arrived at the length of this drift from using the rope and the plumb.

Q. How did this drift compare with reference to the old shaft?

A. As near as I could judge exactly to the center.

Q. How did you find that?

A. We had been using water out of the old shaft there for the boiler and we knew about where the center was. We had a stick across the top there and also a stick under that—one on top of the other.

(Testimony of Will A. Boss.)

Q. What was the result of the exposure made at any part of this drift with reference to the old shaft?

A. Well, we didn't see anything that looked like an old shaft there. It was what I supposed to be solid gravel.

Q. Hadn't been moved at all?

A. As far as I could tell it hadn't.

Q. What were the dimensions of this drift?

A. Eleven feet 6 inches long and between 2 feet and 2 feet 6 inches at the end and 2 feet 6 inches wide.

Q. How many were engaged with you in prosecuting this work?

A. In doing this work on No. 2 there was Angus McDougal and Mr. Rankin—on No. 3 O'Neil and Angus McDougal and Tom Davis.

Q. Three or four of you at work?

A. Yes, sir.

Cross-examination.

(By Mr. MILLER.)

Q. On No. 3 how far were the holes apart on the surface?

A. I never measured it but I should judge about 175 feet.

Q. I am speaking about hole No. 3—the shaft you sunk and the shaft that Nelson and Hensley sunk. Why did you drift 11 feet?

A. Because we wanted to be sure we had got over far enough.

(Testimony of Will A. Boss.)

Q. How large was this drift that you made?

A. About 2 feet 6 inches wide—or maybe 3 feet 6 inches—I will not be sure. That was where it left the drift and between 2 feet and 2 feet 6 inches at the end of the drift.

Q. You mean it was not as large at the end as it was at the starting point? A. No, sir.

Q. And gradually tapered towards the end?

A. Yes, sir.

Q. It was larger at the end or slightly larger.

A. At which end?

Q. At the end where you started from the shaft?

A. Yes, because it had sloughed from the points.

Q. In what direction did it go?

A. I have two means of telling. When the shaft was first sunk and I got the witnesses there to examine the shaft we put a stake or a pole across the center of the shaft that we sunk in the direction of the center of the other one. Later on in April I was there with Mr. Meehan I think it was and at that time we put sticks across in the same way and used a compass in the bottom of the shaft and on top.

Q. Did it vary to the left or to the right?

A. Not as near as I could tell.

Q. Could you tell? A. I think we could.

Q. Do you think you could? A. Yes, sir.

Q. Why do you think so?

A. Because we know the direction of the drift under-

(Testimony of Will A. Boss.)

neath and we knew the center of the hole approximately on top.

Q. Did you use the same precaution and the same means on hole No. 2?

A. We did. I would like to explain right here that I didn't have charge of sinking that shaft or running either drift. O'Neil had charge of that.

Q. But you stated that you varied?

A. I didn't state that I varied at all.

Q. That the shaft varied?

A. No, sir. I stated that the drift at hole No. 2 runs slightly to the left.

Q. You considered that a fair test of hole No. 3 as to whether it was on bedrock?

A. Yes, sir, I do.

Q. Which hole did you sink first No. 2 or No. 3?

A. Both of them at the same time.

Q. Which one did you complete first?

A. No. 2.

Q. And you struck the glacier there?

A. We didn't.

Q. You struck no ice?

A. Never saw any when I was in there.

Q. You have knowledge of it ever having been in there afterwards?

A. I have.

Q. How long afterwards was it that you knew of this ice?

A. The holes was sunk about in October and I saw the ice in the bottom of the drift I think sometime early in April or the latter part of March.

(Testimony of Will A. Boss.)

Q. Could you ascertain or had you any means of knowing the exact distance your drift was from the supposed shaft of Nelson and Hensley?

A. Only as near as we could get.

Q. Did you go there under instructions not to make much effort to find out?

A. I went with instructions when the holes were down to get fair and impartial witnesses, that is the only instructions that I went there with.

Q. Did you enlarge that hole and widen it so there would be no chance of your missing it? A. No, sir.

Q. You were employed and paid by Nelson and Larson to assist in doing this work? A. No, sir.

Q. You had a lay from them yourself; on this very ground? A. Yes, sir.

Q. And hoped to continue that lay?

A. Yes, sir.

NATHAN ZIEMER, a witness produced on behalf of the defendants, being duly sworn, testified as follows?

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name?

A. Nathan Zeimer.

Q. Where do you live? A. Fairbanks.

Q. On Fairbanks Creek? A. Yes, sir.

Q. How long have you lived in the District of Alaska?

A. Since 1896.

(Testimony of Nathan Ziemer.)

Q. What is your business? A. Mining.

Q. Placer mining? A. Yes, sir.

Q. How long have you been a placer miner?

A. Ever since I am in Alaska.

Q. Since 1896? A. Yes, sir.

Q. You have been constantly engaged in it since you came here? A. Yes, sir.

Q. Are you acquainted with the property known as 3 and 4 Above on Fairbanks Creek? A. I am.

Q. I will show you this diagram—this place representing the holes No. 1, 2 and 3 on that property. I will ask you to state if you have ever made any examination of those holes. A. I have of that No. 3.

Q. That is all? A. Yes, sir.

Q. When was that?

A. About the date I would not be certain—I think it was about the last of May or the 1st of April.

Q. Somewhere about that time? A. Yes, sir.

Q. Of what year? A. 1904.

Q. You may tell the Court all that you did and found.

A. We went there in the shaft and measured the drift back that is about all.

Q. What did you find?

A. I measured about 11 feet and a half from the drift in length.

Q. Who was with you?

A. Mr. Meehan, Mr. McCormack and Mr. Larson.

Q. Jack McCormack.

A. I don't know his given name.

(Testimony of Nathan Ziemer.)

Q. Well, tell the Court just what you did there.

A. Well, we went there to find out whether this drift ran under the other shaft and we lined it up with the other shaft.

Q. How?

A. We put a pole down the bottom and lined it up on top the same way.

Q. What did you find out?

A. Found out that they were in line.

Q. Did you make any examination of the drift with reference to that shaft to see what that showed as to bedrock?

A. I could not say whether that goes to bedrock or not. I didn't have no pick.

Q. What I mean is did you examine it with reference to whether it should strike the old shaft if it did strike it?

A. Yes, sir.

Q. What did you find?

A. Nothing but gravel in place, I should judge.

Q. Any evidence of any disturbance?

A. No, sir.

} Cross-examination.

(By Mr. MILLER.)

Q. You can state whether this was in April or May.

A. I wouldn't be positive whether it was in May or April.

Q. Was the hole and shaft entirely free from water?

A. There was ice in it.

(Testimony of Nathan Ziemer.)

Q. In hole No. 3?

A. In the old shaft—in the other one there was ice.

Q. How about the shaft that Meehan and Larson made?

A. There was a little snow in the bottom.

Q. And ice?

A. I didn't see none—the drift I know was clear.

Q. The water from the surface had dripped in to some extent?

A. Not at the time I was there.

Q. You simply examined the old drift that had been made by Meehan and Larson?

A. I did.

Q. What means other than you have stated did you use to ascertain whether this drift varied from the course of the Nelson and Hensley shaft?

A. With a couple of poles.

Q. Could you tell by the pole across the top of the hole alone, by standing in the shaft that Meehan and Larson made?

A. Yes, you could from the top yourself.

Q. How could you tell from the top the direction of the shaft?

A. By the direction of the shaft.

Q. Did you have a candle there to light this shaft?

A. No, sir, it was light enough. You could plainly see there, there was snow down there. You could see the bottom of the shaft plainly.

Q. In the drift?

A. You could not see in the drift.

Q. Did you have a candle in it?

A. Yes, I had a candle in it when I was in the drift.

(Testimony of Nathan Ziemer.)

Q. When was that?

A. Why, the time I was there, of course.

Q. Who was working with you when the candle was in the drift? A. I had it in the drift myself.

Q. You could see around in the drift with it?

A. Yes, sir.

Q. You had the candle in there to inspect the character of the gravel and the bedrock, didn't you?

A. I wasn't caring for any bedrock.

Q. Well, then, to inspect the drift?

A. Yes, sir.

Q. Well, what way had you of ascertaining whether that drift varied to the left or to the right if it was dark in there?

A. It was not dark in the end of the shaft at the drift.

Q. Well, why did you have a candle in it?

A. I would not need any candle in the shaft.

Q. You had no candle there to tell whether it varied to the right or the left in the drift?

A. Why I told you I had a candle in the drift.

Q. But not to test the direction of it?

A. No. I don't think the candle would have tested the direction for me or done me any good in the drift. I couldn't look out on top out of the drift.

Q. But if you had had a candle in the end of the drift could you not have stood in the shaft at the bottom of it and taken the direction of that light and the direc-

(Testimony of Nathan Ziemer.)

tion of the drift by means of that candle as to any variance with the pole across the top?

A. No, sir, when I was in the bottom of the shaft I had light enough.

Q. How long was this old shaft Nelson and Hensley sunk there? How wide was it across the surface?

A. It was caved in a little then but I should judge possibly five feet.

Q. Through what portion of that 5 feet did this drift run?

A. It ran from the center as near as I could tell.

Q. It might have varied a foot or half a foot?

A. It might have varied a few inches.

Q. You think it went right through the center with mathematical precision? A. Yes, sir.

Q. If the bedrock had been struck in either corner of that 5-foot shaft of Nelson and Hensley you might have missed it even then, this being 5 feet wide and that one 2 or 3 feet wide, might you not? A. No, sir.

Q. Is it not true that in sinking a shaft to bedrock to prospect a claim they usually vary from 2 to 2½ feet in width and 4 or 5 feet in length and that when you strike bedrock you strike it in one end of that shaft? Isn't it usual to dig it out when you strike bedrock in one end if you don't go on and clean out the entire shaft on a level with the bedrock? In working in a drift like that you always have one end of the drift lower than the other and then reverse it?

(Testimony of Nathan Ziemer.)

A. Not necessarily.

Q. Isn't that usually the case?

A. Not that I know of.

Q. And that being the case you might have missed the bedrock?

A. The bedrock would have to have been about 4 feet higher than this drift was, if I did.

W. T. McLAREN, a witness produced on behalf of the defendants, being duly sworn testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. W. T. McLaren.

Q. Where do you live?

A. I live out on Fairbanks Creek.

Q. How long have you lived there?

A. I have been there about 3 weeks.

Q. How long have you been in the District of Alaska?

A. About six years.

Q. What was your business? A. Mining.

Q. How long have you been a miner?

A. For the last six years.

Q. Ever since you have been in Alaska?

A. Mostly.

Q. You see this map which I hand you? This represents claims 3 and 4 Above on Fairbanks Creek. Are you familiar with that property? A. Yes, sir.

Q. Have you ever seen it? A. Yes, sir.

(Testimony of W. T. McLaren.)

Q. These (indicating) holes No. 1, 2 and 3. Have you ever seen these holes?

A. I panned on No. 1, looked at the other two, but I had no particular interest in it.

Q. What did you do with regard to Nos. 2 and 3 if anything? A. Nothing more than to look at them.

Q. What did you observe with reference to the dirt taken out?

A. Well, I don't think either one was to bedrock by the looks of the dirt.

Q. What about No. 2?

A. Nothing in particular except they were mostly small rocks and no bedrock.

Q. At what time was that? A. June, 1903.

Q. What did you observe about the dump of No. 3?

A. It was mostly all muck, apparently. I thought it was not much more than started. There was three or four buckets of slide rock or gravel thrown out there. That is all the gravel or rock that was thrown out, but I didn't pay much attention to it.

Q. You paid enough attention to observe the dumps in both places? A. Yes, sir.

Q. Did you see any indication of any bedrock in either hole?

A. None except the hole by the creek.

Q. You remember it? A. Yes, sir.

Cross-examination.

(By Mr. MILLER.)

Q. You didn't pay much attention?

(Testimony of W. T. McLaren.)

A. I noticed it on account of having property on the same creek, but none of it was developed at that time.

Q. From what attention you gave it and what you saw at the time you were impressed that they were not down to bedrock on either No. 2 or No. 3?

A. That was my opinion at that time.

Q. They looked something alike in that respect?

A. No, sir. No. 2 had considerable gravel or slide rock, or whatever you might call it, taken out, and No. 3 had very little out.

Q. If No. 2 had proved to have been to bedrock No. 3 might have proved also to have been to bedrock?

A. Well, it might certainly.

Redirect Examination.

(By Mr. CLAYPOOL.)

Q. Do you know what the general depth of gravel is on that part of the creek?

A. I don't know but very little about it.

THOMAS DAVIS, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. Tom Davis.

Q. Where do you live?

A. On Fairbanks Creek.

Q. How long have you lived there?

A. Over 12 months.

(Testimony of Thomas Davis.)

Q. How long have you been in the District of Alaska?
A. Since 1900.

Q. What is your business? A. Miner.

Q. Placer miner? A. Yes, sir.

Q. How long have you been placer mining?

A. For about 20 years.

Q. Are you acquainted with the property known as No. 3 and 4 Above on Fairbanks Creek?

A. Yes, sir.

Q. This chart representing the property approximately and this hole being No. 1 on the end of No. 4 and this No. 2 and 3, I will ask you to tell if you have ever examined any of these shafts or holes? A. I have.

Q. Which one? A. This one—No. 3.

Q. When was this examination made?

A. About the latter part of October.

Q. Of what year? A. 1903.

Q. At whose request did you examine it?

A. Mr. Boss'.

Q. Have you any interest in this case?

A. No, sir.

Q. You may tell the Court what you found with reference to No. 3.

A. In going down the shaft we measured from the top to the bottom which was 23 feet and 3 inches.

(By the COURT.)

Q. That is in the new shaft? No. 3?

A. That shaft being to bedrock and taking the wind-

(Testimony of Thomas Davis.)

lass rope for a plumb-line the windlass rope to the end of the drift brought us to 11 feet 6 inches.

Q. Did you line the drift with reference to the old shaft? A. No, sir.

Q. What did you find in this drift with reference to any indication of bedrock or any other shaft?

A. There was bedrock all along the drift.

Q. At the bottom? A. Yes, sir.

Q. Any other disturbance?

A. Not as far as I could see.

Q. Gravel in place? A. Gravel in place.

(By Mr. MILLER.)

Q. What was the direction of this drift?

A. It ran as far as I could see directly from one hole to the other.

Q. What means have you of knowing?

A. By taking the timber of the shaft and the timber of the other.

Q. The same timber you placed there?

A. By going down this hole and taking notice of the timber here and the timber there—the squareness of the timber here and there.

Q. What timber are you talking about?

A. The timber on the new shaft.

Q. Placed there when completed? A. Yes, sir.

Q. By going down the shaft and taking that timber you were directed by that?

A. By the squareness of that timber towards the other shaft.

(Testimony of Thomas Davis.)

Q. At whose request did you go?

A. Mr. Boss'.

Q. In whose employ were you at that time?

A. I was employed by Mr. Boss.

Q. Boss and Meehan were on this particular claim?

A. Yes, sir.

Q. Are you in the employ of Boss now?

A. No, sir.

Q. Where have you been operating since that time?

A. I have been working my own property.

Q. Have you been in the employ of Mr. Meehan?

A. No, sir.

EDWARD CRANE, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. Ed Crane.

Q. Where do you live? A. I live on Fairbanks.

Q. What is your business? A. Mining.

Q. How long have you been a miner?

A. I have been there about a year and a half.

Q. How long have you been mining?

A. I have been mining about 15 years.

Q. Placer mining?

A. No, quartz mining before I came to this country.

Q. Placer mining since you came here?

A. Since 1898.

(Testimony of Edward Crane.)

Q. Are you acquainted with the property known as 3 and 4 Above on Fairbanks Creek? A. Yes, sir.

Q. Referring to this map I will ask you, did you ever examine either one of these holes No. 2 and No. 3?

A. I was over there last summer.

Q. What time last summer?

A. Last spring—a year ago this spring.

Q. About what time in the spring?

A. About the first of May, I guess.

Q. What did you do over there?

A. I didn't do anything there—just was over there.

Q. Did you observe either one of these places—take a look at them?

A. Shaft One there on the left limit—I could see bedrock on the dump, and at hole No. 2 there was quite a bit of gravel out but I didn't see no bedrock.

Q. Was there any indication of bedrock at all?

A. I didn't see none.

Q. What about 3?

A. I didn't see no indication of bedrock.

Q. How much gravel out on the dump of 3?

A. I couldn't say.

Q. Much or little?

A. Not a great deal—not nearly as much as on 2.

Cross-examination.

(By Mr. MILLER.)

Q. No bedrock on either one?

A. I didn't see none—no, sir.

(Testimony of Edward Crane.)

Q. Gravel varies does it not on different claims between the muck and the bedrock?

A. I guess it does, I don't know.

Q. It varies in different localities on the same claim?

A. Yes, there is different qualities—different kinds of gravel I guess.

Q. Your judgment was that there was no indication of gravel on either one of these claims?

A. No bedrock in sight that I seen.

Q. They both looked different on No. 1 as regards any indication of bedrock on the surface?

A. Yes, sir.

Q. Nos. 2 and 3 looked alike as regards bedrock on the surface? A. I didn't see nothing but gravel.

Redirect Examination.

(By Mr. CLAYPOOL.)

Q. Speaking of gravel varying, do you happen to know whether or not the gravel is deeper where No. 3 shaft is located than it is where No. 2 is located?

A. I don't know.

JOHN G. CROWLEY, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. Jack Crowley.

A. Fairbanks Creek at present.

Q. Where do you live?

(Testimony of John G. Crowley.)

Q. How long have you lived in Alaska?

A. Since 1897.

Q. What is your business? A. Mining.

Q. Placer mining? A. Yes, sir.

Q. How long have you been placer mining?

A. About ten years.

Q. Are you acquainted with the property on Fairbanks creek known as Nos. 3 and 4 Above?

A. Yes, sir.

Q. This map representing the situation approximately, I will ask you if you have ever made any examination of that property?

A. I have been down Nos. 2 and 3.

Q. When did you go down Nos. 2 and 3?

A. Sometime in April of this year.

Q. 1904? A. Yes, sir.

Q. Who was with you?

A. Meehan and Boss I believe was there and some other gentleman—I don't know his name—and Mr. Larson was there.

Q. George Bow, do you know him?

A. I believe it was, I believe I heard someone call him that.

Q. Tell the Court what you did with No. 2?

A. They put a pole across the top and bottom and lined up the drift.

Q. How far are the holes apart—the old hole and the new one?

(Testimony of John G. Crowley.)

A. The old hole is probably 3 or 4 feet I should judge from the depression at the top.

Q. Proceed and tell what you did.

A. I told you we put a pole on top and one at the bottom and lined them up to get the distance.

Q. What did you ascertain?

A. I don't remember the distance.

Q. Did you line them up?

A. Yes, sir—the drift was bearing a little bit to the left.

Q. How much did it vary?

A. Probably 18 inches or 2 feet.

Q. Did you examine the drift? A. Yes, sir.

Q. What did you find?

A. On the creek side there was a small bunch of ice probably a foot or 18 inches from the bottom.

Q. On the creek side? A. Yes, sir.

Q. That would be on the right side?

A. Yes, sir.

Q. From your experience and your examination there what would you say as to whether or not that drift struck what would be the locality of the old shaft or not?

A. Well, there might be such a thing as that ice coming from water in the old shaft.

Q. Did the drift in your opinion run under or on what should have been the old shaft, if the old shaft had gone that far down?

(Testimony of John G. Crowley.)

A. A little to the side—it might have hit the very end of it. I could not say exactly as to where the old hole was sunk because the hole hadn't sloughed off square at the top.

Q. Do you know how far it was from underneath this piece of ice to bedrock?

A. I should judge about 18 inches or a foot.

Q. Did you find any evidence of disturbance or did it appear to be gravel in place?

A. Above that ice it seemed to be gravel in place.

Q. Anywhere else? A. All under the drift.

Q. Were there any evidences anywhere else in the drift of disturbances?

A. Only just that one spot of ice.

A. And above it appeared to be gravel in place?

A. Yes, sir.

Q. Did you examine hole No. 3 in company with the same gentlemen? A. Yes, sir.

Q. What was done?

A. They lined the hole up the same way, they had a compass with them.

Q. What did you find about that?

A. The old hole was exactly in front.

Q. And what about the drift?

A. In my own opinion the drift ran right square in under the other hole.

Q. Did you examine that drift?

A. It was gravel in place.

(Testimony of John G. Crowley.)

Q. Any evidence of disturbance at all?

A. No, sir.

Cross-examination.

(By Mr. MILLER.)

Q. How did you examine the drift?

A. With a candle and looking at it.

Q. How much did it vary if any?

A. I don't believe it varied any—in my opinion it didn't vary any.

Q. This is the first and only time you examined it?

A. Yes, sir.

Q. You examined No. 2 at the same time?

A. Yes, sir, the same day.

Q. You knew that No. 2 was on bedrock or claimed to be then?

A. I don't know that it has been bedrock—that is a pretty hard thing to know.

Q. How much did the drift in No. 2 vary to the left?

A. Eighteen inches or two feet.

Q. What is the depth of the drift on No. 3.

A. In the neighborhood of ten or twelve feet.

Q. You have no notes?

A. No, sir; I didn't take any notes.

Q. How large a surface was there of the old shaft—Nelson and Hensley shaft?

A. Where do you mean?

Q. How far from one edge of it to the other across the shaft to the top where it sloughed in?

A. It might have been five feet across it. You could

(Testimony of John G. Crowley.)

only judge from the depression of the snow. It is all guess work.

Q. Were you guided by the depression in the snow?

A. Yes, sir, and then there was some ends of cribbing that had been left for cribbing up the windlass.

Q. Didn't you think it caving in might have thrown that cribbing over? A. Not a great deal.

Q. Well, some?

A. Well, I suppose it could throw it out some.

Q. If that Nelson and Hensley shaft was five feet in diameter on the surface, might they not run a two or a two and one-half feet drift under it without striking it?

A. Which hole are you speaking about now?

Q. Nelson and Hensley's No. 3.

A. I don't believe that they could. If there was a drift running in under that hole it would certainly hit it.

Q. Isn't it usual in running a drift for one end of the drift to be lower than the other and for you to work at one end at a time?

A. You might work that way to get a face on, but a miner generally leaves the hole level at the bottom.

Q. And if you struck out at the end of the drift that you last worked in there could be bedrock at one end without bedrock over the entire surface? A. Yes, sir.

Q. And so that end of the drift being that way they might have passed it and still drift directly under the surface of the hole?

A. They could not do it very well—there is too much gravel in the roof to be any bedrock up there.

(Testimony of John G. Crowley.)

Q. But they might have done that?

A. I don't see how.

Q. Do you state to this Court that a two feet and a half drift would test the shaft that indicated five feet diameter at the top?

A. A five-foot shaft at the top has nothing to do with the shaft at the bottom.

Q. Why?

A. The top of a hole hain't got anything to do with the bedrock in the hole of course.

Q. If the shaft was carried down five feet?

A. That might be sloughed on top. I could not tell that. The ground was all frozen.

Redirect Examination.

(By Mr. CLAYPOOL.)

Q. Do you know the difference—if there is any difference—in the depth of gravel in this ground in holes Nos. 2 and 3. Did you observe that? What is the depth of the gravel for instance in hole No. 2?

A. Oh, there might be nine or ten feet of gravel.

Q. And how about No. 3?

A. There is more gravel underneath, I believe.

Q. How much more?

A. There might be a couple of feet more. I didn't examine it very closely.

MATTHEW MEEHAN, one of the defendants herein, being duly sworn, testifies as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. Matt Meehan.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Where do you live? A. Fairbanks.

Q. How long have you lived in Alaska?

A. Seven years off and on.

Q. You are a placer miner? A. Yes, sir.

Q. You are acquainted with this property in dispute?

A. Yes, sir; I staked it.

Q. Both claims? A. Yes, sir.

Q. You are one of the parties to this agreement with Nelson? A. Yes, sir; I made the agreement.

Q. You may state when was the first time you made any examination, if you did make any, of the work claimed to have been done by Nelson and Hensley.

A. The 23d and 24th of April, 1903.

Q. Who was with you?

A. Frank Austen, but he didn't go to examine the ground.

Q. What did you do at that time?

A. Just examined the ground. There was snow on it and the evidence didn't show that the work had been half finished.

Q. What did you find in regard to No. 1?

(Testimony of Matthew Meehan.)

A. You couldn't tell nothing about it. The evidence around there—the wood that was burned and the size of the dump—didn't show on these other two holes that the work was completed.

Q. It didn't look to you as if it had been done?

A. No, sir.

Q. When did you next make an examination of it?

A. In July, 1903.

Q. What examination did you make then?

A. Went over and got poles to see what was there.

Q. Who was with you?

A. Tom Larson, my partner, and we cut poles and sunk them down to see how deep they were, and the look of the gravel showed that the holes weren't half completed.

Q. What did the gravel show as to No. 1?

A. Bedrock.

Q. And as to No. 2?

A. I don't think it was as near bedrock although it might have been closer to bedrock than we gave it credit for.

Q. Was there any indication of bedrock on the dump?

A. No, sir.

Q. What do you say about No. 3?

A. Nothing but a pile of muck and a half a dozen buckets of gravel thrown over it and the moss growing over it.

Q. When were you next over there?

A. With Hendricks from the Lower Town.

(Testimony of Matthew Meehan.)

Q. When was that?

A. Late in July or the first of August.

Q. What happened then?

A. We just examined the ground and I wanted him to look at it so I would have him for a witness in case this ever came up.

Q. That is all that was done at that time?

A. We panned in the first hole on the first dump—Hendricks and I—and the others we didn't get nothing in.

Q. When did you next go there?

A. With Smallwood later on. Just the same thing. Examined the ground.

Q. Showed him the dump?

A. Just the same thing and showed him the surface.

Q. When did you go with reference to being down these holes to drift in Nos. 2 and 3?

A. Mr. Miller wanted to compromise the case last summer with me.

Q. About the time you went there to sink these shafts?

A. We sent men there in the winter and I was in town at the time.

Q. You didn't superintend that work yourself?

A. No, sir.

Q. You went there afterwards?

A. To examine the ground—this spring.

Q. Who was with you at that time?

(Testimony of Matthew Meehan.)

A. George Bow, Jack Crowley, Tom Larson there and Jack McCormack and Judge Roy.

Q. What did you do at that time?

A. We examined the ground.

Q. As to hole No. 2, what did you do?

A. Placed a stick above and below and lined them up. Took a candle back in the drift and found out that it ran off a little to the left, saw a little pigeon hole like that where the ice had just touched there, and a day or two afterward went and put a fire into that hole to find out if it was a glacier or if it was an old drift. Judge Roy was with me in the hole and we came to the conclusion that we had just struck the bottom of the old shaft that they had sunk about eighteen inches from bedrock.

Q. What test did you make to find that out?

A. Put a fire in, and went into it next day and cleaned it off.

Q. When was this? A. April, 1904.

Q. Did you find any evidence of any disturbance above bedrock?

A. No, sir; there weren't to bedrock.

Q. How near were they?

A. Pretty close—fifteen or eighteen inches.

Q. Was there anything in the gravel or dirt outside or was there any bedrock on the dump?

A. No, sir.

Q. When you and Roy were engaged in hole No. 2 how long did you stay there?

A. An hour or two maybe.

(Testimony of Matthew Meehan.)

Q. After the fire had thawed it?

A. Oh, maybe an hour—oh, maybe something like that.

Q. Was that all you did at that time?

A. That was all that was necessary.

Q. What did you and Roy ascertain as to the drift—as to whether it was in line with the hole?

A. It just ran along the edge of it. The new drift just ran alongside of the old shaft.

Q. What did you do about hole No. 3?

A. We did the same thing—lined it up above and below and put a candle in the back of the drift.

Q. What did you find?

A. Found out that it drifted right under the other shaft.

Q. Did you find any evidence of any disturbance there? A. Nothing but clear gravel.

Q. In place? A. Yes, certainly.

Q. Who was with you in No. 3?

A. I think Judge Roy was there and Billy Boss was on top and George Bow—he has gone out, we excused him, and Jack Crowley.

Q. Now, I only want you to testify facts and not your opinions. If I have omitted to ask you anything I want you to state it now.

A. I will state that there was between 10 and 12 feet of gravel in that hole. It was only 5 or 6 feet from the other one. Last summer I brought half a dozen men

(Testimony of Matthew Meehan.)

over here to examine that and there wasn't half a dozen buckets of gravel on the top of the dump.

Q. What is apparently the depth of the gravel in Nos. 2 and 3? A. Just a foot or two.

Q. Where were you when you made the offer to Hensley? A. Right in town here.

Q. Who was present when you were talking to those men?

A. That is a pretty hard question. I don't remember.

Q. What answer or request did they make to your offer?

A. They stated that the hole was to bedrock and they was not going to do any more. I volunteered to stand their expenses to do the work and let them examine it, last June when I was at the cabin at Gold Stream I told him that he had between two and three weeks to finish that work, and we would give him his total and he said he would go and look at it, so he went and came back and said he would let it go.

Cross-examination.

(By Mr. MILLER.)

Q. He claimed the holes were down?

A. Yes, sir; he claimed so.

Q. Then you would not want to go and put them down again?

A. If we thought them holes was down, you don't

(Testimony of Matthew Meehan.)

think we would be putting in a boiler there and drifting under them.

Q. Why did you sink these holes?

A. Because I seen that the holes weren't sunk. I was over there all last summer and seen it. I have sunk a few holes myself.

Q. You were only guessing at it.

A. I was not. I was using my experience as a miner.

Q. But there was nothing definite to make you think they were not?

A. But we have proved it since.

Q. So you went to work to find evidence to build this case upon?

A. We sank those holes for that purpose.

Q. You sank those holes in October?

A. In October or November, I don't know just which. Sometime along about there.

Q. No suit had been commenced against you then?

A. Well, you said you was going to bring suit.

Q. How long did it take you to sink them?

A. Two or three weeks. Boys could tell you better than I could.

Q. You would have had plenty of time to do that after suit was brought.

A. Why, we wanted to go to work on the ground. We didn't want it to lie idle. That was the time to do it in the winter when you had a good chance to. If you will take any miner out on the ground now he will swear that there isn't half a dozen buckets of gravel, let alone 13 feet of gravel.

(Testimony of Matthew Meehan.)

Q. This gravel might have caved in—fallen back into the hole?

A. The hole was perfectly square—hadn't sloughed any. There was cribbing all around it.

Q. There was water in it?

A. Yes, sir—12 or 13 feet of water in it.

Q. Then this No. 3 was at least 14 feet deep?

A. Twelve or 13 feet; yes, sir.

Q. You admit this when you went out there in April?

A. This was in July.

Q. You heard Larson's testimony that it had caved in?

A. The cribbing was around it?

Q. Explain why No. 3 had caved in and not No. 2. Was not the formation the same?

A. No. 2 was further down in the bed of the creek and the chances were there was a little more water, but where No. 3 is it is 50 or 75 feet higher up. Outside of a little sloughing at the edges it was just as perfect as when it went in there and there was not more than half a dozen buckets of gravel on top of the muck.

Q. How did you find that the water was 13 feet deep in No. 3?

A. I had a tape line and I took a pole and stuck it down and worked it down as far as it would go.

Q. You say that in July there was 12 or 13 feet of water?

A. Yes, sir.

Q. Had you any reason to believe that Nelson and Hensley hadn't gone to bedrock in that hole?

(Testimony of Matthew Meehan.)

A. Certain information. And you would believe it yourself if you saw it. Send your witnesses out now and prove it.

Q. This work of Nelson and Hensley was substantially the first work done on Fairbanks Creek?

A. Ziemer and Fallington was out there and so was McPike.

Q. They commenced about the same time that Nelson and Hensley?

A. Something about the same time.

Q. This property had no known value at that time?

A. Just wildcat the same as everything else.

Q. How was it in July when you went out there?

A. They had prospected on the side of Crane Gulch in April.

Q. And it was showing up pretty well?

A. It was not. A little prospect was found down on 6 Below. That was the only prospect that was found there till we went ourselves.

Q. Did you pan or shovel on No. 1? A. I did.

Q. Did Nelson and Hensley?

A. I think Hensley panned a pan.

Q. With what result?

A. Just a couple of fine colors—4 or 5¢, and we had a prospect below on 2.

Q. The property has constantly increased in value?

A. That don't make any material difference to it. We were entitled to it if they had fulfilled their contract. I asked them if they had put the holes down and

(Testimony of Matthew Meehan.)

they said they had. I said if they would go into town and get the papers out I would sign them, but they didn't think enough of the property to do so.

Q. And they never spoke to you again?

A. Neither one of them.

Q. Did they tell Larson to your knowledge?

A. I don't know, to me they didn't.

Q. You never spoke to them after you left there?

A. I spoke to Hensley and he told me that the hole was down 17 feet.

Q. When was that you spoke to him?

A. Some time last summer.

Q. He was anxious to get the matter settled up with you?

A. No, it was you that was doing the anxious work.

Q. And you refused?

A. I told him they hadn't done the work and they weren't entitled to it.

Q. Who?

A. Hensley. You were the one that spoke to me first.

Q. I thought you said they didn't think enough of it to see you again?

A. That was in March.

Q. And you saw them later?

A. I saw Hensley several times in the summer.

Q. You admit bedrock on No. 2?

A. I do not.

Q. You have admitted it.

A. No, sir; I said they were within about 18 inches of it.

(Testimony of Matthew Meehan.)

Q. Who was with you when you went out there and put this fire in that you spoke of?

A. I think it was Judge Roy as lowered me down the hole.

Q. This was in April? A. Yes, sir.

Q. You didn't take the trouble to go and find anyone yourself to show them this fact?

A. Ziemer went down there later. We were looking to see if they had got to bedrock and they were within 12 or 15 or 18 inches of it.

By the COURT.—How much of an excavation did you make at that time?

A. Just made a little hole—the same as the port-hole of a ship, to let the fire get in there awhile. The Judge there did most of the digging and then we dug into the ice.

Q. You didn't dig it all out?

A. Just moved it back in the drift.

Q. You didn't dig all the bottom of that shaft out?

A. We just wanted to see what it was.

Q. How far in did you go?

A. Didn't go very far. You could see that the chances were it was water that dripped in there after they had got down.

Redirect Examination.

(By Mr. CLAYPOOL.)

Q. Mr. Ziemer has no interest in this case?

A. Not any in the world.

(Testimony of Matthew Meehan.)

Q. He just went out there at your request?

A. I just wanted to get some old miners that were known to be reliable. That is the reason I went for Bow and Ziemer. I wanted to get Morency too.

DAVID T. ROY, being duly sworn, testified as follows:

Direct Examination.

(By Mr. CLAYPOOL.)

Q. What is your name? A. David T. Roy.

Q. You are an attorney by profession?

A. Yes, sir.

Q. How long have you been placer mining?

A. I think about two years.

Q. You have heard the testimony of Meehan, about Nos. 2, 3 and 4 on Fairbanks Creek? A. Yes, sir.

Q. I wish you would proceed in your own way and tell the Court just what you and Meehan did.

A. Meehan wanted to put a fire on the right-hand side of the drift in hole No. 2. This drift is in about 12 feet. About 3 feet from the end of the drift he put the fire. He said he thought he saw the dripping of water of some kind and then he came to me and asked me if I would help to clean that fire out. I then climbed down on the right and went in there and moved the dirt that had fallen down by reason of the fire, and found a piece of ice about 8 feet long and 3 or 5 inches high. We dug through that portion of the ice and came to the solid gravel back behind there in place and then we stopped.

(Testimony of David T. Roy.)

Cross-examination.

(By Mr. MILLER.)

Q. When was that?

A. I should judge it to be about the first of April this year.

Q. Who was present? A. Matt Meehan.

Q. Who else? A. That is all.

Q. You didn't get other witnesses?

A. I don't know what he did.

Q. You had a lay from Meehan on this particular claim?

A. Yes, sir.

Q. You are in the employ of McMahon as his attorney now?

A. At this particular time; yes, sir.

Q. How much gold was taken out of that claim last winter?

A. I don't know.

Q. Well, how much did you take out?

A. That is immaterial and irrelevant and a matter on which I do not care to answer.

The COURT.—Not if it refers to this particular claim.

The WITNESS.—I cannot answer that because the boys are still taking some out.

Q. State of your own knowledge how much has been taken out.

A. I don't know.

Q. How much have you taken out?

A. I don't know. The boys are still cleaning up.

Q. Have you taken out \$1000.00?

A. Myself no, I have not.

Defendants rest.

THOMAS LARSON, called on behalf of the plaintiffs in rebuttal, testified as follows:

(By Mr. MILLER.)

Q. How many lays have you had on No. 3 since this work was done by Nelson and Hensley?

(Objection as not proper rebuttal; objection sustained; exception.)

Q. State how many laymen you had on No. 3 last winter? A. Do you mean on all of 3?

Q. Yes.

The COURT.—You want to ascertain how much gold was taken up to that date?

Mr. MILLER.—Yes, sir.

The WITNESS.—About \$9,000.00; perhaps a little better.

Q. Does that include all that has been taken out or all that has been washed out?

A. All that has been washed up.

Q. How much is there in the dump if any, not washed up as yet—are the dumps all washed up to date?

A. I would call them washed up.

Q. You have taken out somewhere between \$9,000 and \$10,000? A. Yes, sir.

Q. Is that net to you or the total?

A. That is the total.

Q. How much of that goes to you as royalty?

A. One-third.

Q. Who were your laymen?

(Testimony of W. H. Woolridge.)

(Objection as immaterial; objection sustained.)

Q. Are there still men on No. 3? A. Yes, sir.

Q. Are you in a position to state definitely how much has been taken out? You kept a record of these matters? A. Yes, sir.

W. H. WOOLRIDGE, recalled in rebuttal, testified as follows:

(By Mr. MILLER.)

Q. State to what extent you have examined the drift of Meehan and Larson on No. 2, as to whether they went to bedrock or into bedrock and state what the showing is?

(Objection as not proper rebuttal and as repetition.)

The COURT.—What is the purpose of this?

Mr. MILLER.—I want to show that they went below bedrock in their drift.

(Objection overruled.)

A. Did I understand you—you are speaking of the drift running into the old hole, No. 2, about which I made a statement heretofore that this drift running under the hole No. 2 of Hensley and Nelson was beneath the surface of the bedrock and that this block of ice was in a break of the bedrock. It was not a simple pot hole but the edge of the bedrock as it came along was dug out and there was an indentation and then we could follow the line and the indentation of the bedrock was directly along this block of ice. I mentioned that particularly to Steelsmith when we were in the hole.

NORMAN McKAY, recalled in rebuttal, testified as follows:

(By Mr. MILLER.)

Q. State what you know with reference to this shaft of Meehan and Larson at hole No. 2 and the drift being to bedrock or below bedrock.

A. The drift was running, I should judge, four inches into the bedrock and there was three or four inches of gravel from the top of the bedrock to the bottom of the ice and I should judge seven or eight inches from the bottom of the drift to the bottom of the ice.

WILLIAM BOSS, recalled in rebuttal, testified as follows:

(By Mr. CLAYPOOL.)

Q. At the time you examined this piece of ice you can tell the Court what condition it was in.

A. When I went down there was at least a foot of gravel under that ice. The bedrock was showing very plainly along here and the ice came out a very short distance into the open drift and about a foot of solid gravel under it.

Q. What was the character of the bedrock?

A. Rotten mica schist.

Q. Rough or broken?

A. Absolutely perfectly smooth.

In the United States District Court, in and for the District of Alaska, Third Division.

O. A. NELSON and G. N. HENSLEY,	}
Plaintiffs,	
vs.	
M. MEEHAN and T. LARSON,	}
Defendants.	

Stipulation.

It appearing that Michael McMahon claims an interest in the placer mining claim described in plaintiff's complaint adverse to the claims of the plaintiffs, it is therefore stipulated, that said Court make an order bringing in and making said Michael McMahon a party defendant in said action without prejudice to any of the proceedings already had in this action, and that plaintiffs may have leave to amend their complaint herein, and the said McMahon hereby waives summons and makes appearance herein.

Dated May 30th, 1904.

H. J. MILLER,
Attorney for Plaintiffs.

DAVID T. ROY,
Attorney for Michael McMahon.

CLAYPOOL & COWLES,
Attorneys for Meehan & Larson.

Filed in the U. S. Court, District of Alaska, 3d Division, June 16, 1904. A. R. Heilig, Clerk. By _____, Deputy.

In the United States District Court, in and for the District of Alaska, Third Division.

O. A. NELSON and G. N. HENSLEY,	}	127.
Plaintiffs,		
vs.		
M. MEEHAN and T. LARSON,	}	
Defendants.		

Order Making Michael McMahon a Party Defendant.

On reading and filing the stipulation of H. J. Miller, attorney for plaintiffs and David T. Roy, attorney for Michael McMahon, and Claypool & Cowles, attorneys for defendants, M. Meehan and T. Larson, and said stipulation providing among other things that an order of this Court be made making said Michael McMahon a party defendant, and that said McMahon therein waives summons and makes appearance, and on motion for plaintiffs, and there being no opposition:

It is ordered that said Michael McMahon be made a party defendant herein, and that the complaint be amended accordingly; and that said Michael McMahon make appearance herein within three days from the entry of this order and that plaintiffs be allowed to file a supplemental complaint herein, setting up plaintiffs' claim for an accounting and share of the royalties and

profits of the premises described in said complaint, and that a copy of the complaint as amended be served upon said David T. Roy, attorney for McMahan, and Claypool and Cowles, attorneys for the above-named defendants, and that said cause thereupon proceed as if said Michael McMahan had been originally a party defendant therein.

Dated the fourteenth day of June, 1904.

JAMES WICKERSHAM,

Judge of Said Court.

Entered June 16, 1904, Journal 3, p. 71.

In the United States District Court, for the District of Alaska, Third Division.

NELSON and HENSLEY,

Plaintiffs,

vs.

MEEHAN, LARSON and MacMAHON,

Defendants.

127.

Order Appointing Referee.

This cause having come to issue and trial before the Court, and the Court having heard the testimony of all the witnesses offered on the part of both plaintiffs and defendants, and being fully advised in relation to all the matters in controversy as shown by the pleadings and the evidence of the parties, now desires more accurate information in relation to the location of the shafts sunk by Nelson and Hensley on the upper end of the mining claim number Three Above Discovery on Fairbanks

Creek in controversy; and the Court deeming it important to ascertain accurately whether or not the shafts so sunk by Nlson and Hensley and called Numbers Two and Three in the evidence in this case, were sunk to bed-rock; and whether or not the drifts running from the new shafts Numbers Two and Threee alongside the old bore to the left and missed the old shafts or actually went under them; and all parties to the litigation in open court consenting thereto—

It is hereby ordered that R. A. Jackson, a duly qualified and expert surveyor, be, and he is hereby, appointed a referee with instructions from the Court to make an accurate survey of the said old shafts Numbers Two and Three and the said new shafts Numbers Two and Three and the drifts running therefrom toward or underneath the old shafts on said mining claim Number Three in litigation, for the purpose of determining accurately their position with regard to each other; and he is instructed to make a careful, detailed and technical survey for the purpose of ascertaining such facts and then to make a map or maps thereof, showing the exact situation, and to make his report thereon to this Court in writing as soon as he can reasonably do so. His costs for doing such work shall be charged as costs in the case and paid by the losing party, and neither party hereto shall pay him any sum whatever for any part or portion

of such labor or work, or anything in connection there-with, except upon the order of the Court.

Dated at Fairbanks, Alaska, this nineteenth day of July, 1904.

JAMES WICKERSHAM,

District Judge.

Entered July 18, 1904, in Journal 3, p. 178.

United States District Court, District of Alaska, Third Division.

O. A. NELSON et al.,

vs.

M. MEEHAN, et al.,

Plaintiffs,

Defendants.

127.

Additional Order.

It is ordered by the Court, plaintiff and defendant con-senting thereto, that R. A. Jackson be allowed to enter upon placer mining claim Number Three Above Discov-ery on Fairbanks Creek, Alaska, to make survey and measurements of shaft and drift near right limit of the upper end of said claim, and known as shaft and drift Number Three with a view of establishing the direction of said drift with reference to the old shaft of plaintiffs, and to widen said drift at a point at or near the old shaft of plaintiffs with a view of establishing the depth of shaft sunk by plaintiffs under their contract on which

this action is based, and as to whether the same extends to bedrock, and that one of plaintiffs and one of defendants each shall be allowed to be present and view said work, and that the said Jackson shall do said work and cause the same to be done by disinterested persons other than plaintiffs and defendants and their employees.

That when the said work is completed as provided by this order the same shall be reported to this Court and the parties examined thereto for the purposes of this action.

Dated July 21st, 1904.

JAMES WICKERSHAM,
Judge of Said Court.

Entered July 21, 1904, Jour. 3, page 181.

*In the United States District Court, for the District of
Alaska, Third Division.*

NELSON and HENSLEY,

Plaintiffs,

vs.

MEEHAN, LARSON and McMAHON,

Defendants

} 127.

Report of Referee.

In compliance with the order of the Court under date 19 July, 1904, I proceeded to No. 3 Above on Fairbanks Creek. On arrival I had new shaft No. 3 and tunnel cleaned. I thereupon made a survey of the tunnel and

found that it would tap the Nelson shaft No. 3 nine-tenths of a foot from the south end of said shaft, crossing the east side line and penetrating under the shaft one and one-tenths foot, at an elevation of two and two-tenths feet from bedrock.

The expense of cleaning new shaft No. 3 and tunnel being large, (I thought it best to find out the wishes of the Court in regard to carrying out the expressed order of the Court, and stopped proceedings for that purpose. I respectfully submit plat as per above survey.

Fairbanks, Alaska, 1 August, 1904.

R. A. JACKSON,

Referee.

Filed Aug. 2, 1904. A. R. Heilig, Clerk.

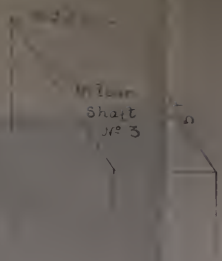
Third

6.00

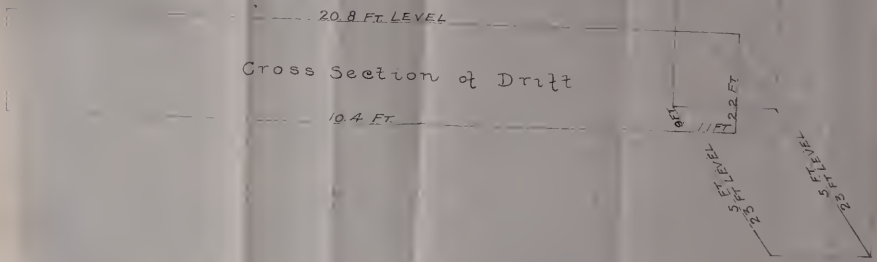
50.00

11.00

...ing
 ...ours at one
 ... bill rendered and
 ...ued... .. 108.00



x Bed Rock in Mechanics Shaft
at 23 Ft level
Scale 2 Ft to 1 inch



United States District Court, District of Alaska, Third
Division.

O. A. NELSON and G. N. HENSLEY,
Plaintiffs,

vs.

MATT MEEHAN, T. LARSON and
MICHAEL McMAHON,
Defendants.

Costs and Disbursements.

Disbursements.

Marshal's fees to service of summons..... 6.00

Clerk's fees

R. Jackson's fees and expenses of making survey and measurements of shaft and drift No. Three on claim in controversy and in removing water and caved in dirt from said shaft preparatory to and to enable said survey to be made, as follows to wit:

Services of R. A. Jackson.... \$150.00

Roadhouse expenses of said Jackson..... 11.00

Services and labor of Dell Bishop, John T. White, William Buss and Charles Mack amounting in all to one hundred and eight hours at one dollar per hour as per bill rendered and vouchers furnished... 108.00

Witness' fees, to wit: Norman McKay, one day and twenty-five miles, traveled to attend. . . .	11.50
W. H. Woolridge, one day.	4.00
John McPike, one day and mileage from Fair- banks creek.	11.50
G. L. Steelsmith, one day and mileage from Fair- banks creek.	11.50
Austin Gibbs, one day and mileage from Fair- banks creek.	11.50
William Crab, one day and mileage from Chena	7.00
Geo. Ashenfelter, one day and mileage from Fair- banks creek.	11.50
Gus Alm, one day and mileage from Fairbanks creek.	11.50
Ben Chase, one day.	4.00
Stenographer.	
	<hr/>
	\$359.00
Clerk's Fees.	
	<hr/>
Total.	

United States of America, }
 District of Alaska. } ss.

H. J. Miller, being duly sworn, says: I am plaintiffs' attorney, and as such am informed relative to the above disbursements. That, to the best of this affiant's knowledge and belief, the items in the above memorandum contained are correct, and that said costs and disbursements have been necessarily expended in the said action.

H. J. MILLER.

Filed in the U. S. Court, District of Alaska, 3d Division, Aug. 20, 1904. A. R. Heilig, Clerk. By _____, Deputy.

In the United States District Court, for the District of Alaska, Third Division.

O. A. NELSON and G. N. HENSLEY,
Plaintiffs,

vs.

MATT MEEHAN, THOMAS LARSON
and MICHEL McMAHON,
Defendants.

Order Settling Bill of Exceptions.

Now, on this 31st day of August, 1904, come the defendants Matt Meehan and Thomas Larson, by their attorneys Messrs. Claypool, Stevens & Cowles, and O. A. Nelson and G. M. Hensley, by their attorney H. J. Miller, Esq., and the defendant Michael McMahon also comes by his attorney David T. Roy, Esq., and the said defendants Matt Meehan and Thomas Larson present their statement of facts and bill of exceptions for settlement herein on their appeal to the United States Circuit Court of Appeals for the Ninth Circuit; which bill of exceptions consists of the foregoing typewritten pages of the proceedings and testimony of witnesses given by the respective parties at the trial of said cause in this court, as well as the stipulation making Michael McMahon a party defendant to said action, and the order of court making the said Michael Mc-

Mahon a defendant in said cause and the voluntary order of court appointing R. A. Jackson, Esq., to secure further evidence in said cause, and the voluntary additional order of said court granting authority to said R. A. Jackson, Esq., to conduct an examination of the premises in dispute in said action, and the report of said R. A. Jackson, Esq., as referee under said orders of said court, together with the plat of said Jackson filed August 2d, 1904, with the report of the said Jackson; and the cost-bill in said cause filed with the clerk thereof; all attached hereto. And there being no objections thereto upon the part of the said plaintiffs and no objections made by the said Michael McMahon, and no amendments proposed thereto, and the said proceedings, evidence of witnesses, stipulation, orders, report, plat and cost-bills attached hereto, as aforesaid, being and constituting all of the evidence and proceedings in said cause, not of record; and inasmuch as the same does not appear of record in said action, and is correct in all respects and is hereby approved, allowed and settled, the same and the whole thereof is hereby made a part of the record herein.

Done in the same term of court as the trial thereof, and within the time allowed by order of said Court and by the same judge who presided at the trial thereof this 31st day of August, 1904.

JAMES WICKERSHAM,
Judge of Said Court.

O. K.—By D. T. ROY, Atty. for Mr. McMahon.

*United States District Court, District of Alaska, Third
Division.*

O. A. NELSON and G. N. HENSLEY,	}	127
Plaintiffs,		
vs.		
M. MEEHAN, T. LARSON and MI-	}	
CHAEL McMAHON,		
Defendants.		

Findings of Fact.

This cause having been called regularly for trial before the court, H. J. Miller appeared as attorney for plaintiffs and Claypool & Cowles appeared at attorneys for defendants. Mat Meehan and T. Larson, and N. V.

Harlan and David Roy, appeared as attorneys for defendant Michael McMahon. And the Court having heard the proofs of the respective parties, and considered the same, and the records and the papers in the cause, and the cause having been submitted to the Court for its decision without argument, and the Court having considered the same now finds the following facts:

1. That at the time of the commencement of this suit defendants owned and were possessed of that certain placer mining claim described in plaintiff's complaint, and containing 20 acres.

2. That on the sixth day of February, 1903, plaintiffs and defendants, M. Meehan and T. Larson, entered into

the agreement mentioned in said complaint and that at the time said agreement was made defendants owned and were possessed of the placer mining claim therein described, to wit, placer mining claim Number Three Above Discovery on Fairbanks Creek, Alaska.

3. That immediately thereafter plaintiffs commenced the performance of their part of said agreement, and continued until they completed same, in putting three holes to bedrock on said claim as therein provided, within the time and at the places therein designated, and that plaintiffs performed all the conditions of their agreements with the defendants, to be performed under its terms.

4. That immediately after the completion of said agreement, plaintiffs notified defendants M. Meehan and T. Larson, of the completion of same, and demanded of defendants, prior to the commencement of this action, a conveyance of said one-half interest in said mining claim, which demand was by the defendants never complied with.

5. That the defendants after the completion of the sinking of three holes by plaintiffs under their contract, and without inspecting said work, promised plaintiffs to make said conveyance; but delayed, neglected and failed to make the same and to examine and inspect said work until it was impossible so to do by reason of said holes having caved in and filled with water; when defendants refused to convey said interests in said claim to said plaintiffs upon their request so to

do, and which request was never by the defendants complied with.

6. That at the times hereinbefore set forth the defendants were and ever since have been, in possession of said mining claim.

7. That during said time defendants have worked and mined said claim through laymen, and have collected and received all the royalties, rents and profits of the said described premises amounting in the whole to three thousand dollars.

8. That prior to the filing of the amended and supplemental complaint herein plaintiffs demanded of the defendants an accounting of said royalties and of the payment to them of their share of the same, and that defendants refused to make said accounting and to make payment to plaintiffs of their share of the same.

As conclusions of law from the foregoing facts, the Court finds:

1. That plaintiffs performed all of the conditions of their agreement with the defendants to be by them performed.

2. That plaintiffs are entitled to prevail herein and to a decree of this Court decreeing a specific performance of said agreement, and to a conveyance of one-half of the claim described herein.

3. That defendants are estopped from questioning plaintiffs' rights to said premises under said agreement by reason of the facts stated in the fifth paragraph of the findings of fact herein.

4. That the plaintiffs are entitled to a judgment and decree for one-half of the rents and royalties collected and received by the defendants, M. Meehan and T. Larson, and for their costs and disbursements in this behalf expended.

JAMES WICKERSHAM,

Judge of Said Court.

Filed in the U. S. Court, District of Alaska, 3d Division, Aug. 17, 1904. A. R. Heilig, Clerk. By _____, Deputy.

*In the United States District Court for the District of Alaska,
Third Division.*

O. A. NELSON and G. N. HENSLEY,

Plaintiffs,

vs.

MATT MEEHAN and THOMAS LARSON,

Defendants.

127.

Motion for New Trial.

Come now the defendants above named, by their attorneys, and move the Court for a new trial of the issues in the above cause for the reasons:

1. Insufficiency of the evidence to justify the decision, and that it is against law and equity.

2. Error in law occurring at the trial and excepted to by the defendants during the trial of said cause.

CLAYPOOL, STEVENS & COWLES,

Attorneys for Defendants.

Service by receipt of a copy of the above admitted this 3d day of August, 1904.

H. J. MILLER,
Attorney for Plaints.

Filed in the U. S. Court, District of Alaska, 3d Division, Aug. 17, 1904. A. R. Heilig, Clerk. By _____, Deputy.

United States District Court, Third Division, District of Alaska.

NELSON and HENSLEY, }
vs. } No. 127.
MEEHAN and LARSON. }

Order Overruling Motion for New Trial.

And now, to wit, August 17, 1904, this action coming on to be heard upon the motion of the defendants for a new trial herein, the Court having heard the arguments of counsel for both parties, overrules said motion. To which ruling defendants except and an exception is allowed.

Entered August 17, 1904, in Journal 3, page 242.

*United States District Court, District of Alaska, Third
Division.*

O. A. NELSON and N. G. HENSLEY,

Plaintiffs

vs.

M. MEEHAN, T. LARSON and MI-
CHAEL McMAHON,

Defendants.

127.

Decree in Action for Specific Performance of Contract.

This cause came on regularly for trial and was tried by the Court on the eighteenth day of July, 1904, upon the amended complaint of the plaintiffs above named; and the answers of the defendants above named; witnesses were examined on the part of both plaintiff and defendants, and upon the proof taken in said action, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon the Court delivered its findings of fact and conclusions of law, and the same having been duly rendered by the Court, and being now on file in this cause, it is ordered that judgment be entered in accordance therewith.

It is now, therefore, hereby ordered, adjudged and decreed that the plaintiffs have judgment, as prayed for in their complaint herein, against the defendants, and each of them and all persons claiming or to claim said

premises or any part thereof, through or under said defendants are hereby adjudged to be invalid and groundless; and that the plaintiffs are hereby declared and adjudged to be the true and lawful owners of a one-half interest of the placer mining claim described in the complaint, and hereinafter described and that said defendants be adjudged to convey said interest in said placer mining claim to the plaintiffs and to execute a good and sufficient deed therefor to them of said property, and for judgment for one-half of the royalties and rents collected and received by said defendants from said described premises, said one-half of the said rents amounting to the sum of fifteen hundred dollars.

Said placer mining claim is described as follows, to wit: Placer mining claim number Three Above Discovery on Fairbanks Creek, Fairbanks Mining District, District of Alaska.

And it is hereby further ordered and adjudged that the plaintiffs do have and recover their costs and disbursements taxed at \$359.00 dollars, against the defendants, M. Meehan and T. Larson.

Done in open court this 17th day of August, 1904.

JAMES WICKERSHAM,

Judge of Said Court.

Entered Aug. 17, 1904, in Journal 3, p. 243.

*In the United States District Court for the District of Alaska,
Third Division.*

O. A. NELSON and G. M. HENSLEY,)
Plaintiffs)

vs.

MATT MEEHAN, THOMAS LARSON)
and MICHAEL McMAHON,)
Defendants.)

Assignment of Errors.

Comes now the defendants Matt Meehan and Thomas Larson and file the following assignment of errors upon which they rely:

I.

That the Court erred in its findings of fact set forth in paragraph III thereof, in finding as follows:

“That immediately thereafter (referring to the contract made between the parties and admitted in the proceedings) plaintiffs commenced the performance of their part of said agreement, and continued until they completed same, in putting three holes to bedrock on said claim, as therein provided, within the time and at the places therein designated, and that plaintiffs performed all the conditions of their agreement with the defendants, to be performed under its terms.”

II.

That the Court erred in its findings, to wit:

“That immediately after the completion of said agreement, plaintiffs notified defendants M. Meehan and T. Larson, of the completion of same, and demanded of defendants prior to the commencement of this action, a conveyance of said one-half interest in said mining claim, which demand was by the defendant never complied with.”

—as set forth in paragraph IV of said findings of fact.

III.

That the Court erred in its finding as follows:

“That the defendants after the completion of the sinking of three holes by plaintiffs, under their contract, and without inspecting said work, promised plaintiffs to make said conveyance; but delayed, neglected and failed to make the same and to examine and inspect said work until it was impossible so to do by reason of said holes having caved in and filled with water, when defendants refused to convey said interests in said claim to said plaintiffs upon their request so to do, and which request was never by the defendants complied with.”

—as set forth in paragraph V of said findings of fact.

IV.

That the Court erred in finding as follows:

“That during said time defendants have worked and mined said claim through laymen, and have collected and received all the royalties, rents and profits of the

said described premises amounting in the whole to \$3,000.00.”

—as set forth in paragraph VII of said findings of fact.

V.

That the Court erred in its conclusions of law:

“That plaintiffs performed all the conditions of their agreement with the defendants to be by them performed.”

—as set forth in paragraph I of said conclusions of law.

VI.

That the Court erred in its finding as a conclusion of law:

“That plaintiffs are entitled to prevail herein and to a decree of this court decreeing a specific performance of said agreement, and to a conveyance of one-half of the claim described herein.”

—as set forth in paragraph II of said conclusions of law.

VII.

That the Court erred in finding, as a conclusion of law:

“That defendants are estopped from questioning plaintiffs’ rights to said premises under said agreement by reason of the facts stated in the 5th paragraph of the findings of fact herein.”

—as set forth in paragraph III of said conclusions of law.

VIII.

That the Court erred in its conclusion of law:

“That the plaintiffs are entitled to a judgment and decree for one-half of the rents and royalties collected and received by the defendants, M. Meehan and Thomas Larson, and for their costs and disbursements in this behalf expended.”

—as set forth in paragraph IV of said conclusions of law.

IX.

That the Court erred in overruling defendants’ motion for a new trial in said cause.

X.

That the Court erred in signing and entering the decree herein for the reason that the same was against the law and the evidence and that the facts proven by the evidence produced at the trial of said cause was not sufficient to support said decree.

XI.

That the Court erred in not comprehending or not considering the report of A. R. Jackson, referee in said cause.

Wherefore the defendants Matt Meehan and Thomas Larson pray that the judgment or decree of said Court be reversed, set aside or modified, and for such other relief as they are entitled to receive.

CLAYPOOL, STEVENS & COWLES,
Attorneys for Defendants, Matt Meehan and Thomas
Larson.

Filed in the U. S. Court, District of Alaska, 3d Division, Aug. 31, 1904. A. R. Heilig, Clerk. By _____, Deputy.

In the United States District Court, for the District of Alaska, Third Division.

O. A. NELSON and G. M. HENSLEY,

Plaintiffs,

vs.

MATT MEEHAN, THOMAS LARSON

and MICHAEL McMAHON,

Defendants.

Bond on Appeal.

Know all men by these presents that we Matt Meehan and Thomas Larson, of the town of Fairbanks, District of Alaska, as principals and D. G. McCarty and Al Hilby, of the same place, as sureties, are held and firmly bound unto O. A. Nelson, G. M. Hensley and Michael McMahon in the full and just sum of five thousand dollars (\$5,000.00) to be paid to the said O. A. Nelson, G. M. Hensley and Michael McMahon, or to either or any of them, their attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of August, A. D. 1904.

Whereas, lately, at a term of the United States District Court for the District of Alaska, Third Division, in a suit pending in said court between the said O. A. Nelson and G. M. Hensley as plaintiffs and the said Matt Meehan, Thomas Larson and Michael McMahon as defendants, wherein the said plaintiffs sued for the specific performance of a contract providing for a conveyance of a one-half interest in that certain placer mining claim situate in the Fairbanks Recording District, District of Alaska, and known as Claim Number Three Above Discovery on Fairbanks creek; a decree was rendered against the said defendants in said action, and the said Matt Meehan and Thomas Larson are about to obtain from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the said decree and final judgment in the aforesaid suit, and a citation directed to said O. A. Nelson and G. M. Hensley, plaintiffs above named, and the said Michael McMahon, as defendant, is about to be issued, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

Now the condition of the obligation is such that if the said Matt Meehan and Thomas Larson shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, and shall in all respects abide and perform the orders and judgments of the appellate court upon their said appeal, then the

above obligation is to be void; otherwise to remain in full force and virtue.

MATT MEEHAN. [Seal]

THOMAS LARSON. [Seal]

D. G. McCARTY. [Seal]

AL HILBY. [Seal]

United States of America, }
 District of Alaska. } ss.

D. G. McCarty and Al Hilby, the persons named in and who subscribed the above and foregoing undertaking as sureties thereto, being first severally and duly sworn, each for himself says:

That he is a resident within the District of Alaska; that he is not a counsellor, attorney at law, marshal, clerk of any court, or other officer of any court; that he is worth the sum specified in the foregoing undertaking, to wit, the sum of five thousand dollars (\$5,000.00), exclusive of property exempt from execution and over and above all just debts and liabilities.

D. G. McCARTY.

AL. HILBY.

Subscribed and sworn to before me this 30th day of August, 1904.

[Seal]

JAS. TOD COWLES,

Notary Public in and for the District of Alaska.

Sufficiency of sureties on the foregoing bond approved this 31st day of August, 1904.

JAMES WICKERSHAM,

Judge of said Court.

Filed in the U. S. Court, District of Alaska, 3d Division, Aug. 31, 1904. A. R. Heilig, Clerk. By _____, Deputy.

In the United States District Court, for the District of Alaska, Third Division.

O. A. NELSON and G. M. HENSLEY,
Plaintiffs,

vs.

MATT MEEHAN, THOMAS LARSON
and MICHAEL McMAHON,
Defendants.

Order Allowing Appeal.

Now, on this 31st day of August, 1904, the same being one of the regular judicial days of the special term of this court held at Fairbanks, District of Alaska, Third Division, this cause coming on to be heard upon the petition of defendants, Matt Meehan and Thomas Larson for an appeal, and the said defendants Matt Meehan and Thomas Larson appearing by their counsel Messrs. Claypool, Stevens and Cowles, and the said defendant Michael McMahon appearing by his counsel David T. Roy, Esq., and the plaintiffs appearing by their counsel H. J. Miller, Esq., and the Court being advised in the premises—

It is ordered that the defendants, Matt Meehan and Thomas Larson, appeal in said cause to the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby allowed; and that a certified

transcript of the record, testimony, exhibits, stipulations, orders, referee's report and plat filed therewith, and all proceedings herein, be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the return day of said appeal and citation be fixed at thirty days from the date hereof and that said defendants Matt Meehan and Thomas Larson shall have 30 days from this date within which to prepare and file their statements of facts and bill of exceptions herein.

It is further ordered that the bond on appeal of the said defendants Matt Meehan and Thomas Larson be, and the same is hereby fixed at the sum of five thousand dollars (\$5,000.00) the same when given and approved to act as a supersedeas bond, as well as a bond for costs and damages on appeal; and that all proceedings in said cause on execution or otherwise are hereby stayed.

JAMES WICKERSHAM,

Judge.

Entered Aug. 31, 1904, in Journal 3, p. 282.

*In the United States District Court, for the District of
Alaska, Third Division.*

O. A. NELSON and G. M. HENSLEY, }
Plaintiffs, }

vs.

MATT MEEHAN, THOMAS LARSON }
and MICHAEL McMAHON, }
Defendants. }

Citation.

United States of America, }
District of Alaska. } ss.

The President of the United States, to O. A. Nelson and
G. M. Hensley, the Above-named Plaintiffs, and to
Michael McMahon, the Above-named Defendant,
Greeting:

You and each of you are hereby cited and admonished
to be and appear at the United States Circuit Court of
Appeals for the Ninth Circuit, to be holden at the city
of San Francisco, in the State of California, within
thirty days from the date of this writ, pursuant to an
order allowing an appeal, made and entered in the
above-entitled cause, in which O. A. Nelson and G. M.
Hensley are plaintiffs and respondents and the said Mi-
chael McMahon is a defendant and respondent, and in

which the said Matt Meehan and Thomas Larson are defendants in said action and appellants in said appeal, to show cause, if any there be, why the decree and judgment rendered in said cause in said United States District Court for the District of Alaska, Third Division, against the defendants therein, should not be set aside, corrected and reversed, and why speedy justice should not be done to the said Matt Meehan and Thomas Larson in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 31st day of August, A. D. 1904, and of the Independence of the United States the one hundred and twenty-ninth.

JAMES W. WICKERSHAM,
United States District Judge in and for the District of
Alaska, Third Division.

[Seal] Attest: ALBERT R. HEILIG,
Clerk.
By John L. Long,
Deputy.

Service of the within citation and the receipt of a copy thereof admitted this 31st day of August, A. D. 1904.

_____,
Attorney for O. A. Nelson and G. M. Hensley, Plaintiffs.
DAVID T. ROY,
Attorney for Defendant Michael McMahon.

Filed in the U. S. Court, District of Alaska, 3d Division, Aug. 31, 1904. A. R. Heilig, Clerk. By _____, Deputy.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

MATT MEEHAN and THOMAS LARSON,

Appellants,

vs.

O. A. NELSON, G. M. HENSLEY and MICHAEL McMAHON,

Respondents

Affidavit of Service.

United States of America, }
District of Alaska. } ss.

Morton E. Stevens, being duly sworn upon his oath deposes and says:

That he is a citizen of the United States and over the age of twenty-one years; that on the 1st day of September, A. D. 1904, at the hour of 4:30 o'clock P. M. at the front door of the courthouse in the town of Fairbanks, Third Judicial Division, District of Alaska, he served the citation in the above-entitled cause upon respondents O. A. Nelson and G. M. Hensley, by delivering to H. J. Miller, their attorney of record, a true copy of said citation.

And that he served upon said respondents O. A. Nelson and G. M. Hensley, the order extending the return day within which to docket said cause, on file herein,

at the time and place above described, by serving a true copy of said order upon H. J. Miller, their attorney of record.

MORTON E. STEVENS.

Subscribed and sworn to before me this 7th day of September, A. D. 1904.

[Seal]

JOHN H. DILLON,

Notary Public in and for the District of Alaska.

Filed in the U. S. Court, District of Alaska, 3d Division, Sep. 7, 1904. A. R. Heilig, Clerk. By _____, Deputy.

United States District Court, Third Division, District of Alaska.

O. A. NELSON and G. M. HENSLEY,
Plaintiffs,

vs.

M. MEEHAN and T. LARSON,
Defendants.

No. 127.

Clerk's Certificate to Transcript.

I, Albert R. Heilig, clerk of the United States District Court for the Third Division of the District of Alaska, hereby certify the foregoing one hundred and eight type-written pages numbered from 1 to 108 inclusive to be a full, true and correct copy of the record, bill of exceptions, assignment of errors and all proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said

court, and that the same is in full compliance with the order of said Court allowing an appeal of said cause. That pages 109 and 110 and 111 constitute the original citation and proof of service.

I further certify that the cost of the foregoing record on appeal is \$75.00 and that said amount was paid by the plaintiffs above named.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Eagle, Alaska, this twentieth day of September, 1904.

[Seal]

ALBERT R. HEILIG,

Clerk U. S. District Court for the District of Alaska,
Third Division.

[Endorsed]: No. 1125. United States Circuit Court of Appeals for the Ninth Circuit. Matt Meehan and Thomas Larson; Appellants, vs. O. A. Nelson, G. M. Hensley and Michael McMahon, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Third Division.

Filed October 8, 1904.

F. D. MONCKTON,

Clerk.

